

ATTACHMENT 4

FEDERAL AND TRIBAL
RESERVED SETTLEMENTS,
INCLUDING ALL CONSENT
DECREES AND ALL
ATTACHMENTS THERETO,
AND ALL FEDERAL, STATE
AND/OR TRIBAL
LEGISLATION NECESSARY
TO ENACT AND APPROVE
THE WATER RIGHT
SETTLEMENTS, CONSISTING
OF 745 PAGES.

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SHOSHONE-BANNOCK SETTLEMENT

RECEIVED
AUG 21 1995
Department of Water Resources
Adjudication Bureau

COUNTY OF TWIN FALLS	
County	Idaho
AUG - 2 1995	
By _____	Clerk
_____ Clerk	

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
PARTIAL FINAL)
CONSENT DECREE)
DETERMINING THE RIGHTS OF)
THE SHOSHONE-BANNOCK)
TRIBES TO THE USE OF)
WATER IN THE UPPER SNAKE)
RIVER BASIN)

The District Court of the Fifth Judicial District in and for the County of Twin Falls having entered on November 19, 1987 its COMMENCEMENT ORDER commencing the Snake River Basin adjudication; the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, the State of Idaho, the United States, and certain Idaho Water Users having entered into **THE 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT** (hereinafter Agreement) in settlement of claims made by the United States on behalf of the Shoshone-Bannock Tribes to water rights in the Upper Snake River Basin; the Agreement having been submitted to this Court in lieu of a claim as provided by Idaho Code Section 42-1409(6) (1990); the Northside Canal Company having agreed by Resolution dated July 19, 1990, to receive natural flow water from Sand Creek in exchange for making storage water available to the Tribes as required by the Agreement; the United States and the State having agreed upon claims submitted for the non-Indian portion of the Fort Hall Irrigation Project and the Fort Hall Agency, Bureau of Indian Affairs; the Director having filed a

Director's Report setting forth all water rights that are the subject of this Decree; the period for filing objections to the Agreement having expired; any objections having been resolved; upon notice and an opportunity to be heard provided to all parties in this case pursuant to the docket sheet procedures contained in SRBA Administrative Order No. 1; and the Court having heard argument from the parties to the Agreement in support of its approval;

The District Court now finds as follows:

The Agreement is a fair and equitable settlement of all water right claims of the United States for the Shoshone-Bannock Tribes in the Upper Snake River Basin, for the Bureau of Indian Affairs, Fort Hall Agency and for the Fort Hall Irrigation Project;

The modifications in this decree to the descriptions of the water rights contained in the Agreement are clerical and ministerial in nature and do not alter the intent of the Agreement.

The Agreement does not adversely affect the interests of persons not party to the Agreement; and

THEREFORE IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the provisions of the 1990 Fort Hall Indian Water Rights Agreement for which this court has jurisdiction are ratified, confirmed and approved and that the water rights of the United States for the Shoshone-Bannock Tribes in the Upper Snake River Basin, for the Bureau of Indian Affairs, Fort Hall Agency, and the Fort Hall Irrigation Project are as follows:

I. DEFINITIONS.

The following definitions apply for the purposes of this Decree:

1. "Acre foot" or "AF" means the amount of water necessary to cover one acre of land to a depth of one foot and is equivalent to 43,560 cubic feet or 325,851 gallons of water.
2. "Acre feet per year" or "AFY" means the number of acre feet of water used from January 1 to December 31.
3. "Allotted lands" means lands within or without the exterior boundaries of the Fort Hall Indian Reservation, which were allotted to individual Indians in accordance with applicable Tribal/federal agreement and federal statutes, and which are presently owned by Indians in restricted fee or trust status, and which are located in the counties of Bannock, Bingham, Caribou, and Power. The applicable Tribal/federal agreement and statutes include:
 - .1 the Agreement of May 14, 1880, ratified by Act of February 23, 1889, ch. 203, 25 Stat. 687; and
 - .2 the Act of March 3, 1911, ch. 210, 36 Stat. 1058, 1063.
4. "American Falls Reservoir" means a water storage facility of the federal Minidoka Project authorized by the Secretary of the Interior under the Reclamation Act of 1902, 32 Stat. 388-390 (April 23, 1904); examined and reported upon by a Board of Army Engineers and approved by the President on January 5, 1911, in accordance with the Act of June 25, 1910, 36 Stat. 835-836; and initially constructed in 1927 and subsequently replaced under the authority of the Act of December 28, 1973,

Pub. L. 93-206, 87 Stat. 904-905.

5. "Annual diversion volume" means the maximum volume of water in AFY that can be diverted or stored by the holder of a water right.
6. "Annual volume of consumptive use" means the maximum volume of water in AFY that can be consumptively used by the holder of a water right.
7. "Basis of right" refers to the legal authority pursuant to which the water right is established or the document by which the right is evidenced.
8. "Beneficial use" means any use of water for DCMI, irrigation, hydropower generation, recreation, stockwatering, fish propagation and instream flow uses as well as any other uses that provide a benefit to the user of the water.
9. "Blackfoot Reservoir" means a water storage facility of the Federal Blackfoot Project authorized by the Act of March 1, 1907, ch. 2285, 34 Stat. 1015, 1024; the Act of April 30, 1908, ch. 153, 35 Stat. 70, 78; Act of April 14, 1910, ch. 140, 36 Stat. 269, 274; and the Act of May 24, 1922, ch. 199, 42 Stat. 552, 568.
10. "Ceded lands" means those lands within the Reservation as originally established under the Second Treaty of Fort Bridger of July 3, 1868, 15 Stat. 673 and companion executive orders of June 14, 1867, 1 C. Kappler 835-837 (1904), and July 30, 1869, 1 C. Kappler 838-839 (1904) and as fixed by the federal survey of 1873 that were ceded by the Tribes to the United States pursuant to the following Tribal/federal

agreements:

- .1 Agreement of May 14, 1880, ratified by the Act of February 23, 1889, ch. 203, 25 Stat. 687;
 - .2 Agreement of July 18, 1881, ratified by the Act of July 3, 1882, ch. 268, 22 Stat. 148;
 - .3 Agreement of May 27, 1887, ratified by the Act of September 1, 1888, ch. 936, 25 Stat. 452; and
 - .4 Agreement of February 5, 1898, ratified by the Act of June 6, 1900, ch. 813, 31 Stat. 692.
11. "Consumptive use" means the amount of water that does not remain in the water system after use or is not returned to the water system through return flows or seepage, whether or not treatment for purpose of maintaining water quality is required before the water may be returned to the water system, but does not include water lost through evaporation from storage.
 12. "Cubic feet per second" or "CFS" means a rate of water discharge equivalent to approximately 448.8 gallons per minute.
 13. "DCMI" means domestic, commercial, municipal and industrial uses excluding hydroelectric generation. Domestic use means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities, stockwatering, and for the irrigation of a family lawn, garden or orchard not exceeding one-half acre of area per household. Industrial and commercial use means the use of

water for any purpose that benefits an industrial or commercial enterprise. Industrial and commercial use of water includes, but is not limited to, agricultural spraying, irrigation of plants in greenhouses, industrial cooling, mining, energy production, commercial recreation, and losses associated with any industrial or commercial operation. Municipal use means the delivery and use of water through an investor-owned, mutually-owned, tribally-owned or publicly-owned water utility or delivery system for all uses usual and ordinary to such systems. Such use includes but is not limited to uses of water for domestic, irrigation of lawns and gardens, commercial, industrial, fire protection, irrigation and other uses in park and recreation facilities, and street washing.

14. "Diversion" means the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other act of man, or the impoundment of water in a reservoir for rediversion.
15. "Diversion rate" means the maximum rate in CFS at which water may be diverted at a point of diversion.
16. "Fort Hall Agency" means the component of the United States Department of the Interior, Bureau of Indian Affairs, located on the Fort Hall Indian Reservation.
17. "Fort Hall Indian Reservation" or "Reservation" means those lands within the boundaries of the Reservation, as originally established under the Second Treaty of Fort Bridger of July 3, 1868, 15 Stat. 673, and companion executive orders of

June 14, 1867, 1 C. Kappler 835-837 (1904), and July 30, 1869, 1 C. Kappler 838-839 (1904), as fixed by the federal survey of 1873 that have not been ceded by the Tribes to the United States pursuant to the following Tribal/federal agreements:

- .1 Agreement of May 14, 1880, ratified by the Act of February 23, 1889, ch. 203, 25 Stat. 687.
- .2 Agreement of July 18, 1881, ratified by the Act of July 3, 1882, ch. 268, 22 Stat. 148.
- .3 Agreement of May 27, 1887, ratified by the Act of September 1, 1888, ch. 936, 25 Stat. 452, excepting those lots within the Pocatello Townsite which were not ceded by such agreement.
- .4 Agreement of February 5, 1898, ratified by the Act of June 6, 1900, ch. 813, 31 Stat. 672, excepting Allotment Nos. T-8, 45, 46, 48, 50, 61, 71 and 72 owned by the Tribes or held in restricted fee or trust status for the Tribes by the United States.

Attachment A, which is incorporated herein by reference, shows the boundaries of the Fort Hall Indian Reservation.

18. "Fort Hall Irrigation Project" (also referred to as the "Fort Hall Indian Irrigation Project" in the Agreement) means the federal project constructed, in part, to provide water for the irrigation of lands on the Reservation. The following federal statutes authorized the Fort Hall Irrigation Project:

- .1 Act of August 15, 1894, ch. 290, 28 Stat. 286, 305.
- .2 Act of March 1, 1907, ch. 2285, 34 Stat. 1015, 1024.

- .3 Act of April 30, 1908, ch. 153, 35 Stat. 70, 78.
- .4 Act of April 4, 1910, ch. 140, 36 Stat. 269, 274.
- .5 Act of May 24, 1922, ch. 199, 42 Stat. 552, 56.
- .6 Act of May 9, 1924, ch. 151, 43 Stat. 117.
- .7 Act of June 30, 1948, ch. 767, 62 Stat. 1167.
- .8 Act of September 30, 1950, ch. 1114, 64 Stat. 1083.
- .9 Act of August 31, 1954, ch. 1159, 68 Stat. 1026.
- .10 Act of August 17, 1961, Pub. L. 87-154, 75 Stat. 390.

Attachment B, which is incorporated herein by reference, shows the exterior boundaries of the Fort Hall Irrigation Project.

- 19. "Grays Lake" means the storage facility used to store water for the benefit of the Fort Hall Irrigation Project.
- 20. "Impairment in the quality of water," applicable only in the context of a change in water right no. 01-10223, means a diminishment in the quality of water being diverted for a water right to the extent that it is no longer useful for its intended purpose.
- 21. "Indian" means any person who:
 - .1 is a member of a tribe recognized as eligible for special programs and services provided by the United States because of the person's status as an Indian; or
 - .2 is recognized as an Indian person under Tribal law; or
 - .3 holds or is recognized by the Secretary as eligible to hold restricted trust property on the Reservation.
- 22. "Indian lands" means all lands within the exterior boundaries of the Reservation that are held in trust for the Tribes or

owned by Indians and those lands outside the exterior boundaries of the Reservation held in trust by the United States for the Tribes or an enrolled member thereof.

23. "Injury to a water right," applicable only in the context of a change of water right no. 01-10223, means a diminishment in quantity or an impairment in the quality of water available to a senior or a junior water right holder as a consequence of a change, except that no water right holder is required to continue to waste water for the benefit of any other water right holders.
24. "Irrigation use" means application of water to the land surface or root zone of the soil for the purpose of producing crops, lawn or landscaping on that land.
25. "Michaud Contract" means that Memorandum Agreement of April 25, 1957 between the Bureau of Reclamation and the Bureau of Indian Affairs relating to the water supply for the Michaud Division of the Fort Hall Indian Reservation.
26. "Michaud Division" means that division of the Fort Hall Irrigation Project authorized by the Act of August 31, 1954, ch. 1159, 68 Stat. 1026.
27. "Palisades Reservoir" means a water storage facility of the federal Minidoka Project initially authorized under the provisions of the federal reclamation laws by the presentation to the President and the Congress of the report of December 9, 1941, H.R. Doc. No. 457, 77th Cong., 1st Sess., by the Secretary of the Interior, and reauthorized by section 1 of the Act of September 30, 1950, ch. 1114, 64

Stat. 1083.

28. "Period of use" means the time of the year when water may be used for a particular purpose.
29. "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the state of Idaho or any political subdivision or instrumentality thereof, the United States or any political subdivision or instrumentality thereof, an Indian tribe or any political subdivision or instrumentality thereof, or any other public or private entity.
30. "Place of use" means the location where water is used.
31. "Point of diversion" or "POD" means any location at which water is diverted from the water system. A numeral to the right of the legal description indicates the number of existing points of diversion within a tract.
32. "Point of injection" means any location at which water that has been diverted from the water system is placed back into the water system. A numeral to the right of the legal description indicates the number of existing points of injection within a tract.
33. "Point of rediversion" means the location at which water that has been diverted from the water system and then placed back into the water system is again diverted from the water system. A numeral to the right of the legal description indicates the number of existing points of rediversion within a tract.

34. "Project lands" means those lands that are served by the Fort Hall Irrigation Project. Current project lands are shown on Attachment B.
35. "Priority date" means the priority date assigned to the water right.
36. "Purpose of use" means the nature of use of the water right.
37. "Reservation Watermaster" means the Tribal officer or any successor designated to administer the Tribal Water Code.
38. "Right number" means the number assigned to each decreed water right for purposes of identification. The first two numerals of the right number indicate hydrologic basin number assigned by IDWR.
39. "Secretary" means the Secretary of the United States Department of the Interior or a duly authorized representative thereof.
40. "Snake River Watermaster" means the Watermaster of Water District 01 or any successor.
41. "Source" means the named or described source of water within the water system.
42. "Stock water" means the use of water solely for livestock or wildlife consumption including associated losses.
43. "Transfer" means any change in a point of diversion, place of use, period of use or purpose of use for a water right.
44. "Tribal water right(s)" means those water rights confirmed and recognized in this Decree as rights held in trust for the Tribes by the United States, including those rights so held for the benefit of individual Indians on Indian lands.

45. "Tribes" or "Tribal" means the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation in Idaho as the collective successors-in-interest of Indian signatories to the Second Treaty of Fort Bridger of July 3, 1868, 15 Stat. 673, and subsequent Tribal/federal agreements.
46. "Upper Snake River Basin" means that portion of the Snake River Basin upstream from the Hells Canyon Dam, FERC Project No. 1971.
47. "Water system" means all rivers, streams, lakes, springs, groundwater or other water sources within the Snake River Basin within the State of Idaho.
48. "Winters Doctrine" means the federal legal principles announced by the United States Supreme Court in Winters v. United States, 207 U.S. 564 (1908).

II. WATER RIGHTS HELD BY THE UNITED STATES FOR THE USE AND BENEFIT OF THE SHOSHONE-BANNOCK TRIBES OF THE FORT HALL INDIAN RESERVATION IN THE UPPER SNAKE RIVER BASIN

A. THE WATER SUPPLIED FROM THE FOLLOWING SOURCES SHALL CONSTITUTE THE TRIBAL WATER RIGHTS:

Right No. 01-10223

- .i Source: Snake River/Sand Creek
- .ii Annual Diversion Volume: 100,000 AFY increasing to 115,000 AFY as (1) future reservation lands are irrigated from this source, or (2) as corresponding amounts of the water rights for the ceded lands of the Fort Hall Irrigation Project are relinquished by the United States.
- .iii Diversion Rate: 390.00 CFS increasing to 470.00 CFS at the same relative rate as the volume in ii. above.

- .iv Annual Volume of Consumptive Use: 60,986 AFY
- .v Priority Date: June 14, 1867
- .vi Points of Diversion:
- SESWNE Sec 31 Twp 1N Rge 37E BM
(Snake River into Reservation Canal)
- NENWNW Sec 7 Twp 2S Rge 37E BM
(Sand Creek into Reservation Canal)
- Points of Injection:
- NESWSE Sec 24 Twp 2S Rge 36E BM
(Reservation Canal into Blackfoot River)
- Points of Rediversion:
- NENENE Sec 13 Twp 3S Rge 35E BM
(Blackfoot River into Fort Hall Main Canal)
- NWNENW Sec 14 Twp 3S Rge 35E BM
(Blackfoot River into North Canal)
- Future points of diversion may be developed in accordance with paragraph II.C.3, II.C.4 and II.C.5, *infra*.
- .vii Purpose and Period of Use:
- Irrigation 3/15 - 11/15
- .viii Place of Use: 14,687 present and 8,672 future acres for a total of 23,359 acres within the Reservation.
- .ix Basis of Right: Winters Doctrine
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
- .a The rate of diversion for this water right shall be measured at the head of the Reservation Canal

located in SESWNE Sec 31 Twp 1N Rge 37E BM.

- .b The volume of diversion for this water right shall be measured at the Drop located in SENWSE Sec 13 Twp 2S Rge 36E BM downstream from the point at which Sand Creek empties into the Reservation Canal.
- .c This right combined with water right nos. 27-11375, 27-02007, and 25-02160 provide the water supply for up to 53,828 acres from the combined water sources but none of the limitations of diversion rate or volume shall be exceeded for this right in providing the water supply.
- .d The available inflow to the Reservation Canal upstream from the Drop, including Sand Creek, shall be counted as part of this water right up to the demand of the North and Main Canals. The portion of Sand Creek that was used with the control afforded by the Equalizing Reservoir under conditions existing in 1989 shall continue to be used when the Snake River is under regulation by the Snake River Watermaster and will be considered part of this water right. When the Snake River is under regulation by the Snake River Watermaster fifteen percent (15%) of the computed Sand Creek flows, when returned to the Snake River through the Blackfoot River because of lack of control with the present Equalizing Reservoir, shall be

considered as natural flow credited to downstream water users and for which no exchange of storage will be required. All of the remaining Sand Creek water not diverted through the Main and North Canals because of the physical limitations of the Equalizing Reservoir, in excess of fifteen percent (15%) up to 50,000 AFY as determined by gaging, when the Snake River is under regulation by the Snake River Watermaster shall be delivered to the North Side Canal Company in exchange for an equal amount of storage water from Palisades or Jackson Lake Reservoirs. The actual storage water from Palisades or Jackson Lake Reservoirs will be released to meet the Snake River diversion requirements of the Tribes that would have been met by Sand Creek. This water shall be deemed the first storage water released from the American Falls Reservoir for the North Side Canal Company.

Right No. 27-11373

- .i Source: Ross Fork Creek/Ross Fork Basin groundwater
- .ii Annual Diversion Volume: 5,000 AFY
- .iii Diversion Rate: 29.07 CFS
- .iv Annual Volume of Consumptive Use: 3,320 AFY
- .v Priority Date: June 14, 1867
- .vi Existing Points of Diversion:

SENWNE Sec 4, SESENE Sec 10, SENWSW Sec 17, SWSSEW Sec

21, NESWNW Sec 34 all in Twp 5S Rge 36E BM
NWNWSE Sec 31 (2 POD), SWSWSE Sec 33 all in Twp 4S Rge
36E BM

NENENE Sec 36 Twp 4S Rge 35E BM

Future Points of Diversion may be developed as needed
within the Ross Fork Creek basin to utilize this water
right within the Ross Fork Creek basin.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 1,503 present and future acres within
the Ross Fork Creek basin.

.ix Basis of Right: Winters Doctrine

.x Matters Necessary for Definition, Clarification or
Administration of the Right:

.a The Tribes shall have the option of using surface
water or groundwater diverted within the Ross Fork
Creek basin to satisfy this right, in whole or in
part, provided that any diversions of surface water
or groundwater by the Tribes in excess of 5,000 AFY
from the Ross Fork Creek Basin shall be charged
against water right no. 27-11376.

Right No. 27-11374

.i Source: Lincoln Creek/Lincoln Creek Basin groundwater

.ii Annual Diversion Volume: 5,700 AFY

.iii Diversion Rate: 33.00 CFS

.iv Annual Volume of Consumptive Use: 3,768 AFY

- .v Priority Date: June 14, 1867
- .vi Existing Points of Diversion:
 - NENESE Sec 25 Twp 3S Rge 36E BM
 - NENWSE Sec 31 Twp 3S Rge 36E BMFuture points of diversion may be developed as needed within the Lincoln Creek Basin to utilize this water right within the Lincoln Creek drainage basin.
- .vii Purpose and Period of Use:
 - Irrigation 3/15 - 11/15
- .viii Place of Use: 1,701 present and future acres within the Lincoln Creek basin.
- .ix Basis of Right: Winters Doctrine
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - .a The Tribes shall have the option of using surface water or groundwater diverted within the Lincoln Creek basin to satisfy this right, in whole or in part, provided that any diversions of surface water or groundwater by the Tribes in excess of 5,700 AFY from the Lincoln Creek basin shall be charged against water right no. 27-11376.

Right No. 29-00466

- .i Source: Bannock Creek
- .ii Annual Diversion Volume: 3,095 AFY
- .iii Diversion Rate: 16.25 CFS
- .iv Annual Volume of Consumptive Use: 1,842 AFY

- .v Priority Date: June 14, 1867
- .vi Existing Points of Diversion:
 - NENWSE Sec 32 Twp 7S Rge 33E BM
 - SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM
 - NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM
- .vii Purpose and Period of Use:
 - Irrigation 3/15 - 11/15
- .viii Place of Use: 774 present and future acres within the Reservation.
- .ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

Right No. 29-00467

- .i Source: Bannock Creek, West Fork Bannock Creek
- .ii Annual Diversion Volume: 629 AFY
- .iii Diversion Rate: 3.30 CFS
- .iv Annual Volume of Consumptive Use: 374 AFY
- .v Priority Date: April 1, 1889
- .vi Existing Points of Diversion:
 - NENWSE Sec 32 Twp 7S Rge 33E BM
 - SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp
9S Rge 33E BM

- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: 157 present and future acres within the
Reservation.
- .ix Basis of Right: The basis of the right is the Winters
Doctrine with the relative share and priorities of the
water allocations determined by the Bannock Creek
Decree [United States v. Daniels (D. Idaho April 9,
1907)].

Right No. 29-12848

- .i Source: Rattlesnake Creek
- .ii Annual Diversion Volume: 571 AFY
- .iii Diversion Rate: 3.00 CFS
- .iv Annual Volume of Consumptive Use: 340 AFY
- .v Priority Date: June 14, 1867
- .vi Existing Points of Diversion:
NENWSE Sec 32 Twp 7S Rge 33E BM
SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge
33E BM
NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp
9S Rge 33E BM
- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15

- .viii Place of Use: 143 present and future acres within the Reservation.
- .ix Basis of Right: Winters Doctrine
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - .a The Tribes and the United States shall exercise this right in a manner that ensures persons with water rights decreed in the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)] and that are confirmed in the SRBA continue to receive their full legal entitlement.

Right No. 29-00469

- .i Source: West Fork Bannock Creek
- .ii Annual Diversion Volume: 190 AFY
- .iii Diversion Rate: 1.00 CFS
- .iv Annual Volume of Consumptive Use: 113 AFY
- .v Priority Date: May 1, 1894
- .vi Existing Points of Diversion:
 - NENWSE Sec 32 Twp 7S Rge 33E BM
 - SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM
 - NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM
- .vii Purpose and Period of Use:
 - Irrigation 3/15 - 11/15

- .viii Place of Use: 48 present and future acres within the Reservation.
- .ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

Right No. 29-00470

- .i Source: West Fork Bannock Creek
- .ii Annual Diversion Volume: 248 AFY
- .iii Diversion Rate: 1.30 CFS
- .iv Annual Volume of Consumptive Use: 147 AFY
- .v Priority Date: April 1, 1894
- .vi Existing Points of Diversion:
 - NENWSE Sec 32 Twp 7S Rge 33E BM
 - SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM
 - NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM
- .vii Purpose and Period of Use:
 - Irrigation 3/15 - 11/15
- .viii Place of Use: 62 present and future acres within the Reservation.
- .ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek

Decree [United States v. Daniels (D. Idaho April 9, 1907)].

Right No. 29-00471

- .i Source: Bannock Creek
- .ii Annual Diversion Volume: 248 AFY
- .iii Diversion Rate: 1.30 CFS
- .iv Annual Volume of Consumptive Use: 147 AFY
- .v Priority Date: April 1, 1894
- .vi Existing Points of Diversion:
 - NENWSE Sec 32 Twp 7S Rge 33E BM
 - SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM
 - NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM
- .vii Purpose and Period of Use:
 - Irrigation 3/15 - 11/15
- .viii Place of Use: 62 present and future acres within the Reservation.
- .ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

Right No. 29-00472

- .i Source: West Fork Bannock Creek

- .ii Annual Diversion Volume: 190 AFY
- .iii Diversion Rate: 1.00 CFS
- .iv Annual Volume of Consumptive Use: 113 AFY
- .v Priority Date: April 1, 1898
- .vi Existing Points of Diversion:
 - NENWSE Sec 32 Twp 7S Rge 33E BM
 - SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM
 - NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM
- .vii Purpose and Period of Use:
 - Irrigation 3/15 - 11/15
- .viii Place of Use: 48 present and future acres within the Reservation.
- .ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

Right No. 29-00473

- .i Source: West Fork Bannock Creek
- .ii Annual Diversion Volume: 190 AFY
- .iii Diversion Rate: 1.00 CFS
- .iv Annual Volume of Consumptive Use: 113 AFY
- .v Priority Date: April 1, 1898

- .vi Existing Points of Diversion:
NENWSE Sec 32 Twp 7S Rge 33E BM
SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge
33E BM
NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp
9S Rge 33E BM
- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: 48 present and future acres within the
Reservation.
- .ix Basis of Right: The basis of the right is the Winters
Doctrine with the relative share and priorities of the
water allocations determined by the Bannock Creek
Decree [United States v. Daniels (D. Idaho April 9,
1907)].

Right No. 29-00474

- .i Source: West Fork Bannock Creek
- .ii Annual Diversion Volume: 190 AFY
- .iii Diversion Rate: 1.00 CFS
- .iv Annual Volume of Consumptive Use: 113 AFY
- .v Priority Date: April 1, 1901
- .vi Existing Points of Diversion:
NENWSE Sec 32 Twp 7S Rge 33E BM
SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge
33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp
9S Rge 33E BM

- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: 48 present and future acres within the
Reservation.
- .ix Basis of Right: The basis of the right is the Winters
Doctrine with the relative share and priorities of the
water allocations determined by the Bannock Creek
Decree [United States v. Daniels (D. Idaho April 9,
1907)].

Right No. 29-12049

- .i Source: Bannock Creek
- .ii Annual Diversion Volume: 18,833 AFY
- .iii Diversion Rate: 98.87 CFS
- .iv Annual Volume of Consumptive Use: 11,205 AFY
- .v Priority Date: June 14, 1867
- .vi Existing Points of Diversion:
NENWSE Sec 32 Twp 7S Rge 33E BM
SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge
33E BM
NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp
9S Rge 33E BM
NESWSE Sec 6 Twp 7S Rge 33E BM
(3 - 20 HP pumps for Michaud Project)
Future Points of Diversion may be developed within the

Bannock Creek basin to utilize this water right within the Bannock Creek drainage basin.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 4,708 present and future acres within the Reservation.

.ix Basis of Right: Winters Doctrine

.x Matters Necessary for Definition, Clarification or Administration of the Right:

.a The Tribes and the United States shall exercise this right in a manner that ensures persons with water rights decreed in the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)] and that are confirmed in the SRBA continue to receive their full legal entitlement.

Right No. 29-12050

.i Source: Portneuf River/Jeff Cabin Creek

.ii Annual Diversion Volume: 970 AFY

.iii Diversion Rate: 9.70 CFS

.iv Annual Volume of Consumptive Use: 727.50 AFY

.v Priority Date: June 14, 1867

.vi Points of Diversion:

Future Points of Diversion may be developed within the Portneuf River basin upstream from the point the river enters the Portneuf Reservoir in Sec 11 Twp 6S Rge 38E BM for use within the Portneuf River basin.

- .vii Purpose and Period of Use:
Irrigation 4/1 - 11/1
- .viii Place of Use: 485 present and future acres within the
Reservation.
- .ix Basis of Right: Winters Doctrine

Right No. 29-00231

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 259.3 AFY
- .iii Diversion Rate: 1.59 CFS
- .iv Annual Volume of Consumptive Use: 154.3 AFY
- .v Priority Date: February 16, 1869
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 61 (NESW, SENW, Sec 35 Twp 6S
Rge 38E) for 79.53 acres.
- .ix Basis of Right: The Winters Doctrine per the
Memorandum Decision in United States v. Hibner, 27 F.2d
909 (D. Idaho, E.D. 1928) and the Decree of the United
States District Court, Eastern Division, dated April 8,
1929.

Right No. 29-00238

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 282.5 AFY
- .iii Diversion Rate: 1.733 CFS

- .iv Annual Volume of Consumptive Use: 168.14 AFY
- .v Priority Date: February 16, 1869
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 71 (SENW, SWNE, Sec 36 Twp 6S Rge 38E) for 86.67 acres. Allotment 72 (NESW and NWSE Sec 36 Twp 6S Rge 38E) for 80 acres.
- .ix Basis of Right: The Winters Doctrine per the Memorandum Decision in United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928) and the Decree of the United States District Court, Eastern Division, dated April 8, 1929.

Right No. 29-12051

- .i Source: Mink Creek
- .ii Annual Diversion Volume: 104.3 AFY
- .iii Diversion Rate: 0.75 CFS
- .iv Annual Volume of Consumptive Use: 62.1 AFY
- .v Priority Date: February 26, 1869
- .vi Points of Diversion: SWNW Sec 21 Twp 7S Rge 35E BM
- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: Allotment T-8 (SWNW Sec 21 Twp 7S Rge 35E BM for 31.75 acres) as shown on Attachment A.
- .ix Basis of Right: The Winters Doctrine per Decree of District Court of the Fifth Judicial District Court of

the State of Idaho, in and for the County of Bannock dated June 5, 1926, in Smith v. City of Pocatello, Case No. 6669.

Right No. 27-11375

- .i Source: Blackfoot River
- .ii Annual Diversion Volume: 150,000 AFY
- .iii Diversion Rate: 1380 CFS
- .iv Annual Volume of Consumptive Use: 79,546 AFY
- .v Priority Date: June 14, 1867
- .vi Points of Diversion:
 - SENWNW Sec 7 Twp 2S Rge 38E BM
(Blackfoot River into Little Indian Canal)
 - NENENE Sec 13 Twp 3S Rge 35E BM
(Blackfoot River into Fort Hall Main Canal)
 - NWNENW Sec 14 Twp 3S Rge 35E BM
(Blackfoot River into North Canal)
 - SWSESW Sec. 3 Twp 7S Rge 32E BM
 - SENWSE Sec. 3 Twp 7S Rge 32E BM
 - NWNWSW Sec. 2 Twp 7S Rge 32E BM
 - NESENW Sec. 2 Twp 7S Rge 32E BM
 - NWNESE Sec. 1 Twp 7S Rge 32E BM
 - SWNWNW Sec. 6 Twp 7S Rge 33E BM
 - NESESW Sec. 6 Twp 7S Rge 33E BM
 - NESESW Sec. 6 Twp 7S Rge 33E BM
 - SWSWSW Sec. 30 Twp 6S Rge 33E BM

Future Points of Diversion may be developed to divert water from (1) anywhere on the Blackfoot River or (2) ground water within the Reservation as described in Matters Necessary for Definition, Clarification or Administration of the Right, below.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 30,469 present and future acres within the Reservation.

.ix Basis of Right: Winters Doctrine

.x Matters Necessary for Definition, Clarification or Administration of the Right:

.a If the natural flow of the Blackfoot River is not sufficient to satisfy this right and other rights to divert Blackfoot River natural flow pursuant to state law, the Tribes may satisfy this right by using water right nos. 27-02007 and 25-02160, provided that the combined use in satisfaction of this right shall not exceed 150,000 AFY.

.b If the diversions under this right exceed 150,000 AFY, the amount in excess of 150,000 AFY shall be charged against water right no. 01-10223.

.c This right combined with water right nos. 01-10223, 27-02007 and 25-02160 can be used to irrigate up to 53,828 present and future acres from the combined water sources.

- .d The Tribes and United States shall exercise this water right in a manner that ensures persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive their full legal entitlement under state law. The parties will specifically enumerate all rights protected by this provision once the SRBA Decree for this basin becomes final. These state created water rights are estimated to divert not more than 45,000 AFY of water from the Blackfoot River. In the event this estimate of the amount of existing diversions under state created water rights is exceeded as a result of the Decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribal water rights to account for this change.
- .e The Tribes and the United States shall exercise this right in a manner that will not impair the project entitlements of the Fort Hall Irrigation Project water users.
- .f If the water supplied under this right and water right nos. 27-02007 and 25-02160 does not provide 150,000 AFY, the Tribes may divert groundwater within the Reservation under this right, exclusive of the water right nos. 27-11376 and 29-12052, such that the combined water supply from water right nos. 27-02007 and 25-02160 and surface and

groundwater under this right yields 150,000 AFY.

Right No. 27-02007

- .i Source: Blackfoot River
- .ii Annual Diversion Volume: 348,000 AFY
- .iii Diversion Rate: Not limited
- .iv Annual Volume of Consumptive Use:
Included in water right nos. 01-10223 and 27-11375.
- .v Priority Date: September 3, 1907
- .vi Points of Diversion:
NWNE Sec 12 Twp 5S Rge 40E BM (Blackfoot River into
Blackfoot Reservoir)
Points of Rediversion:
SENWNW Sec 7 Twp 2S Rge 38E BM
(Blackfoot River into Little Indian Canal)
NENENE Sec 13 Twp 3S Rge 35E BM
(Blackfoot River into Fort Hall Main Canal)
NWNENW Sec 14 Twp 3S Rge 35E BM
(Blackfoot River into North Canal)
- .vii Purposes and Periods of Use:

Irrigation from Storage	3/15 - 11/15
	348,000 AFY
Storage for Irrigation	1/1 - 12/31
	348,000 AFY
- .viii Place of Use: 30,469 present and future acres within
the Reservation.
- .ix Basis of Right: License.

.x Remarks:

- .a The rediversion of water from storage under this right and the water right no. 25-02160 may be used to satisfy the Blackfoot River natural flow to meet but not exceed the 150,000 AFY annual diversion volume under water right no. 27-11375. The Tribes may use water from storage under this right in excess of the amount needed to satisfy water right no. 27-11375; provided that uses in excess of that amount necessary to satisfy the 150,000 AFY annual diversion volume of water right no. 27-11375 shall be charged against water right no. 01-10223.
- .b This right combined with water right nos. 01-10223, 27-11375 and 25-02160 may be used to irrigate up to 53,828 present and future acres from the combined water sources.
- .c The Tribes and the United States shall exercise this right in a manner that will not impair the project entitlements of the Fort Hall Irrigation Project water users.

Right No. 25-02160

- .i Source: Grays Lake
- .ii Annual Diversion Volume: 100,000 AFY
- .iii Diversion Rate: Not limited
- .iv Annual Volume of Consumptive Use: Included in the water right nos. 01-10223 and 27-11375.

- .v Priority Date: August 23, 1919
- .vi Points of Diversion:
 - SWSWSW Sec 1 Twp 5S Rge 42E BM
 - (Grays Lake/Clarks Cut Canal)
 - Points of Rediversion:
 - NWNE Sec 12 Twp 5S Rge 40E BM (Blackfoot Reservoir)
 - SENWNW Sec 7 Twp 2S Rge 38E BM
 - (Blackfoot River into Little Indian Canal)
 - NENENE Sec 13 Twp 3S Rge 35E BM
 - (Blackfoot River into Fort Hall Main Canal)
 - NWNENW Sec 14 Twp 3S Rge 35E BM
 - (Blackfoot River into North Canal)
- .vii Purposes and Periods of Use:

Irrigation from Storage	3/15 - 11/15	
		100,000 AFY
Storage for Irrigation	1/1 - 12/31	
		100,000 AFY
- .viii Place of Use: 30,469 present and future acres within the Reservation.
- .ix Basis of Right: Permits

- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - .a The rediversion of water from storage under this right and the water right no. 27-02007 may be used to satisfy the Blackfoot River natural flow to meet but not exceed the 150,000 AFY annual diversion volume under the water right no. 27-11375. The Tribes may use water from storage under this right in excess of the amount needed to satisfy water right no. 27-11375; provided that uses in excess of that amount necessary to satisfy the 150,000 AFY diversion volume of water right no. 27-11375 shall be charged against water right no. 01-10223.
 - .b This right combined with water right nos. 01-10223, 27-11375, and 27-02007 may be used to irrigate up to 53,828 present and future acres from the combined water sources.
 - .c The Tribes and the United States shall exercise this right in a manner that will not impair the project entitlements of the Fort Hall Irrigation Project water users.

Right No. 27-11376

- .i Source: Groundwater within the Reservation
- .ii Annual Diversion Volume: 125,000 AFY
- .iii Diversion Rate: 813.40 CFS
- .iv Annual Volume of Consumptive Use: 93,615 AFY

.v Priority Date: June 14, 1867

.vi Existing Points of Diversion:

SWSESW Sec. 3 Twp 7S Rge 32E BM
SENWSE Sec. 3 Twp 7S Rge 32E BM
NWNWSW Sec. 2 Twp 7S Rge 32E BM
NESENW Sec. 2 Twp 7S Rge 32E BM
NWNENE Sec. 1 Twp 7S Rge 32E BM
SWNWNW Sec. 6 Twp 7S Rge 33E BM
NESESW Sec. 6 Twp 7S Rge 33E BM
NESESW Sec. 6 Twp 7S Rge 33E BM
SWSWSW Sec. 30 Twp 6S Rge 33E BM
SESWSE Sec. 31 Twp 5S Rge 33E BM
SESWNE Sec. 32 Twp 5S Rge 33E BM
SWSENW Sec. 32 Twp 5S Rge 33E BM
SWSESE Sec. 32 Twp 5S Rge 33E BM
SWSESW Sec. 33 Twp 5S Rge 33E BM
NESESE Sec. 33 Twp 5S Rge 33E BM
SESESW Sec. 34 Twp 5S Rge 33E BM
SESENE Sec. 34 Twp 5S Rge 33E BM
SESWSE Sec. 35 Twp 5S Rge 33E BM
SESWNE Sec. 3 Twp 6S Rge 33E BM
SESWNW Sec. 3 Twp 6S Rge 33E BM
NWNENW Sec. 4 Twp 6S Rge 33E BM
NENWNW Sec. 6 Twp 6S Rge 33E BM
NWNENE Sec. 1 Twp 6S Rge 32E BM
NWNENW Sec. 1 Twp 6S Rge 32E BM
SENWNE Sec. 2 Twp 6S Rge 32E BM

NESESE Sec. 2 Twp 6S Rge 32E BM
SWNESW Sec. 1 Twp 6S Rge 32E BM
SWSESW Sec. 6 Twp 6S Rge 33E BM
SENESE Sec. 8 Twp 6S Rge 33E BM
SENWNW Sec. 8 Twp 6S Rge 33E BM
SENESE Sec. 7 Twp 6S Rge 33 E BM
NENWNE Sec. 12 Twp 6S Rge 33E BM
SENWNW Sec. 12 Twp 6S Rge 32E BM
NESWNE Sec. 11 Twp 6S Rge 32E BM
SWSESE Sec. 12 Twp 6S Rge 32E BM
NWSESW Sec. 8 Twp 6S Rge 33E BM
SENESE Sec. 8 Twp 6S Rge 33E BM
NWNENW Sec. 18 Twp 6S Rge 33E BM
SWNENE Sec. 13 Twp 6S Rge 32E BM
SENESE Sec. 13 Twp 6S Rge 32E BM
SESENE Sec. 24 Twp 6S Rge 32E BM
SESWSE Sec. 23 Twp 6S Rge 32E BM
SWSESW Sec. 23 Twp 6S Rge 32E BM
NESWSE Sec. 22 Twp 6S Rge 32E BM
SENWSW Sec. 22 Twp 6S Rge 32E BM
SESENE Sec. 28 Twp 6S Rge 32E BM
NWSENE Sec. 27 Twp 6S Rge 32E BM
SWNESW Sec. 27 Twp 6S Rge 32E BM
SWSESW Sec. 28 Twp 6S Rge 32E BM
NESESE Sec. 29 Twp 6S Rge 32E BM
NWNWNW Sec. 33 Twp 6S Rge 32E BM
SESWNE Sec. 5 Twp 7S Rge 33E BM

SWSESE Sec. 7 Twp 7S Rge 33E BM
NESENE Sec. 21 Twp 3S Rge 35E BM
NWNWNW Sec. 6 Twp 4S Rge 35 E BM
SESESW Sec. 16 Twp 4S Rge 34E BM
NWNWSE Sec. 26 Twp 3S Rge 34E BM

Future points of diversion may be developed to utilize this water right on any Indian lands.

.vii Purposes and Periods of Use:

Irrigation	3/15 - 11/15	115,000 AFY
DCMI	1/1 - 12/31	10,000 AFY

.viii Place of Use: 42,592 present and future acres for irrigation within the Reservation. Present and future DCMI uses on any Indian lands.

.ix Basis of Right: Winters Doctrine

.x Matters Necessary for Definition, Clarification or Administration of the Right:

.a If the Tribes' combined surface water and groundwater diversions from the Ross Fork Creek basin exceed 5,000 AFY, or the Tribes' combined surface water and groundwater diversions from the Lincoln Creek basin exceed 5,700 AFY, such excesses shall be charged against this Tribal groundwater right.

.b The nine wells used to supplement the surface water portion of the Michaud Division divert water included in this Tribal water right.

- .c Lot Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of Block No. 191; Lot No. 1 of Block 192; Lot Nos. 1, 2, 3, 4, 5, 6, 7, and 8 of Block No. 196; Lot Nos. 19 and 20 of Block No. 341; Lot No. 5 of Block No. 593; and Lot No. 7 of Block No. 599 within the City of Pocatello remain Indian lands and may utilize water under this water right. Water diverted or withdrawn under this right from diversion points or structures located on said lots shall be used only for domestic, commercial, municipal or industrial uses occurring on any said lots.
- .d Allotment Nos. T-8, 45, 46, 48, 50, 61, 71 and 72 within the Portneuf River basin may utilize water under this right.

Right No. 29-12052

- .i Source: Bannock Creek basin groundwater
- .ii Annual Diversion Volume: 23,500 AFY
- .iii Diversion Rate: 154.93 CFS
- .iv Annual Volume of Consumptive Use: 17,843 AFY
- .v Priority Date: June 14, 1867
- .vi Points of Diversion:

Future points of diversion may be developed as needed within the Bannock Creek basin to utilize this water right within the Bannock Creek drainage basin.

- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: 8,704 future acres on Indian lands within the Reservation in the Bannock Creek drainage basin.
- .ix Basis of Right: Winters Doctrine
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
- .a The Tribes have the right to the annual yield of the Bannock Creek basin up to a combined surface and groundwater diversion of 48,500 AFY.
- .b If the Tribes' combined surface and groundwater diversion from this basin exceeds 48,500 AFY, such excess shall be charged against water right no. 27-11376.
- .c The Tribes and United States shall exercise this water right in a manner that ensures persons diverting ground water from the Bannock Creek drainage basin prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive their full legal entitlement under state law. The parties will specifically enumerate the rights protected by this provision once the SRBA Decree for this basin becomes final. These state created water rights are estimated to divert not more than 2,400 AFY of water from the ground water of the Bannock Creek drainage basin. In the event

this estimate of the amount of existing diversions under state water rights is changed as a result of the Decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribal water rights to account for this change.

B. FEDERAL CONTRACT STORAGE SPACE HELD BY THE UNITED STATES FOR THE TRIBES

1. The Memorandum of Agreement between the Bureau of Reclamation and the Bureau of Indian Affairs Relating to a water supply for Michaud Division of the Fort Hall Irrigation Project as approved April 25, 1957, a copy of which is attached hereto as Attachment D, is included in the Agreement and referenced here for purposes of acknowledging that it describes a part of the Tribal water supply.

C. GENERAL PROVISIONS APPLICABLE ONLY TO WATER RIGHTS HELD BY THE UNITED STATES FOR THE BENEFIT OF THE SHOSHONE-BANNOCK TRIBE OF THE FORT HALL INDIAN RESERVATION

1. The Tribes shall have the right to use the natural flows of all waters arising wholly within and traversing only Reservation lands for instream flows to maintain or to enhance the integrity of an ecosystem.
2. The Tribes may transfer or lease within the Reservation all or any portion of the Tribal water rights, if the transfer:
 - .1 is to any beneficial use,
 - .2 does not exceed the maximum diversion rate notwithstanding the period of use,

- .3 does not exceed the annual volume of diversion,
 - .4 does not exceed the annual volume of consumptive use,
 - .5 is to any place of use within the Reservation, except as to water right nos. 27-11373, 27-11374, and 29-12050, where the place of use is specifically restricted by this Decree, and
 - .6 does not change the source, except as permitted by water right nos. 27-11373, 27-11374 and 27-11375.
3. The Tribes may change the points of diversion and periods of use of the water right no. 01-10223 provided the change:
- .1 is to any beneficial use,
 - .2 does not exceed the maximum diversion rate notwithstanding the period of use,
 - .3 does not exceed the annual volume of diversion,
 - .4 does not exceed the annual volume of consumptive use, and
 - .5 does not result in an injury to a water right.
4. Whenever the Tribes or the United States intend to change or add a point of diversion or change the period of use of all or part of the water right no. 01-10223, the Tribes or the United States will prepare a written Notice of Transfer of this water right. The Tribes or the United States shall serve a copy of the Notice of Transfer on each member of the Intergovernmental Board and shall publish the Notice of Transfer at least once a week for

two consecutive weeks in a newspaper printed within the county wherein the point of diversion lies, or in the event no newspaper is printed within that county, then in a newspaper of general circulation therein. The Tribes or the United States shall complete the service and publication at least one hundred and twenty (120) days prior to the intended change. The Notice of Transfer shall contain the following information:

- .1 The amount of water in CFS and/or AFY that is to be changed including any reductions that will occur at any existing points of diversion, if applicable;
 - .2 The legal descriptions of the locations of any new or changed points of diversion including any points of diversion that will no longer be used, if applicable;
 - .3 The period of use during which the water will be used as a result of the change including periods during which water will no longer be used or periods during which water use will be reduced as a result of the change; and
 - .4 A statement that any person who believes that the change will injure a water right shall file a Notice of Objection with the Intergovernmental Board within ten days of the last date of service or publication.
5. Any person claiming that a change in a point of diversion or period of use of water right no. 01-10223 will injure

a water right shall first request mediation before the Intergovernmental Board prior to seeking judicial relief.

.1 In any proceeding, the person claiming that a change will injure the objector's water right shall have the burden of proving that an injury will occur.

.2 Upon receipt of any objection, the Intergovernmental Board shall attempt to mediate the dispute. After reviewing all relevant data and information, the Intergovernmental Board shall make a recommendation regarding the change if there is a consensus. In the event the Intergovernmental Board determines that the proposed change would injure an objector's water right, its recommendation shall address whether it is possible to mitigate the injury in a way that will allow the Tribes to achieve the purposes of the change.

.3 In the event that the Intergovernmental Board fails to mediate the dispute, judicial relief may be sought by the objector.

6. The Tribal water rights and any water accruing to such rights set forth in this Decree may not be sold, leased, rented, transferred or otherwise used off the Reservation.

7. Stock watering may occur anywhere on Indian lands from any part of the water system on Indian lands and may be used year around as a part of each water right defined in

this Decree except no diversion from a point off the Reservation for stockwater shall be made during the non-irrigation season.

8. The Tribes have the right to generate hydropower incidental to water delivery for the other purposes specified in this Decree as well as pursuant to paragraph II.C.2.
9. If any allottee or Tribal member is decreed a water right in the SRBA for Indian lands, there shall be a corresponding reduction in the Tribal water right(s) that provide a water supply for the Indian lands.
10. Except for the Snake River and the Blackfoot River, the administration of water rights within the Reservation shall be as follows:
 - .1 The Tribes shall administer the distribution of all Tribal water rights within the Reservation.
 - .2 Upon reasonable notice, the Tribes and the United States shall provide access to the State to inspect water monitoring devices and diversions within the Reservation. The Tribes and the United States may accompany the State.
 - .3 The Tribes shall adopt and submit a Tribal Water Code to the Secretary for approval. The Tribal Water Code shall, in part,
 - .i provide for a Reservation Watermaster,

- .ii establish a Tribal Water Commission to manage the Tribal water delivery systems on the Reservation, and
 - .iii provide for monitoring of and enforcement of Tribal water rights.
- .4 Pending adoption and approval of a Tribal Water Code, the Secretary, as trustee for the Tribes, shall temporarily administer the distribution of the Tribal water rights within the Reservation.
- .5 The United States shall administer the distribution of the Fort Hall Irrigation Project water rights and the Fort Hall Agency water rights from the point the water is delivered to the project facilities.
- .6 The State shall administer the distribution of those rights acquired under state law within the Reservation that are not a part of the Fort Hall Agency, Tribal or Fort Hall Irrigation Project water rights.
- .7 Upon reasonable notice and in accordance with applicable law, the Tribes and the United States may inspect water monitoring devices and diversions within the Reservation for those water rights administered under paragraph II.C.10.6. The State may accompany the Tribes and the United States.
- .8 The Tribes or the United States shall install or cause to be installed monitoring devices for

administration of Tribal water rights within the Reservation to the same extent as required of other water users in Idaho. The United States, the Tribes and the State shall monitor those diversions that each party actually administers within the Reservation and report the diversion records each year to the Intergovernmental Board by March 1 of the year after each reporting year.

11. This Decree does not resolve the administration of water rights from the Blackfoot River. Administration shall continue as described in the Agreement.

12. The administration of water rights from the Snake River shall be as follows:

.1 The State shall account for and administer the diversion of water from the Snake River by all water users, including the United States and the Tribes, in conformance with the SRBA Decree. The State, in administering such waters, shall ensure the delivery to all water users, including the United States and the Tribes, their legal entitlement to water from natural flow and storage. The United States shall be solely responsible for the physical operation of its Snake River diversion facilities in accordance with the Snake River Watermaster's direction. In the event the United States disputes the Snake River Watermaster's direction regarding the administration of its Snake

River diversion, the dispute shall be resolved by the District Court. Distribution of the water after diversion by the United States shall be in accordance with paragraphs II.C.10.1, II.C.10.4, and II.C.10.5.

.2 IDWR shall provide the Intergovernmental Board, upon request, any Snake River water measurement data or reports gathered or prepared by or for IDWR.

.3 Upon reasonable notice, the State shall provide the Tribes and the United States access to inspect water monitoring devices and diversions on the Snake River where necessary for purposes of the administration of Tribal or Fort Hall Irrigation Project water rights from the water system. The State may accompany the party inspecting the monitoring device or diversion.

13. The Tribes or the United States shall prepare a written Notice of Use of a Tribal water right whenever the Tribes or the United States intend to (1) transfer or lease within the Reservation the right to an existing use, (2) put to use within the Reservation any portion of the Tribal water right which is not in present use, or (3) undertake a combination of (1) and (2).

.1 The Notice of Use shall contain the following information:

- .i The Right Number of the Tribal water right(s) to be changed or used;
 - .ii A legal description of the location where the Tribes or the United States will use the water right;
 - .iii A legal description of the location where the Tribes or the United States will reduce the use of water as a consequence of the transfer and of the point of diversion where the Tribes or the United States will reduce the diversion, if applicable;
 - .iv The ownership status of the land where the Tribal water right will be used;
 - .v The legal description of the new point of diversion;
 - .vi A narrative description of the proposed diversion works such as the size of pumps, ditches, wells, etc.;
 - .vii The amount of water stated in AFY and in CFS to be used on the location described in .ii above; and
 - .viii The nature of use of the Tribal water right at the location described in .ii above.
- .2 Notices involving 25 CFS or more, or 7,500 AFY or more and notices involving any increase in the diversion rate or volume of the water right no. 01-10223 shall be served on each member of the

Intergovernmental Board at least thirty (30) days prior to the transfer, lease or new use.

- .3 Notices involving less than 25 CFS or less than 7,500 AFY shall be served on the Intergovernmental Board annually at the time of the annual report provided for in paragraph II.C.10.8 provided that no notice will be required for transfers, leases or new uses of 0.04 CFS or 2.2 AFY or less.

14. The State shall provide written notice to the Tribes and the Fort Hall Agency Superintendent whenever an application for a state water right permit is sought for a water use in the Upper Snake River mainstem, the Blackfoot River basin, and the Portneuf River basin. The report shall contain the following:

- .1 the permit number of the state water right applied for;
- .2 a legal description of the location of the proposed place of use;
- .3 the ownership status of the land where the water will be used, if known;
- .4 the legal description of the proposed point of diversion; and
- .5 a narrative description of the proposed diversion works, such as the size of the pumps, ditches, wells, etc.

15. The Tribes reserve the right to develop geothermal ground water on the Reservation having a temperature of at least

two hundred twelve (212) degrees Fahrenheit in the bottom of a well.

III. WATER RIGHTS HELD BY THE UNITED STATES FOR USE ON NON-INDIAN OWNED LANDS WITHIN THE FORT HALL IRRIGATION PROJECT AND FOR THE BUREAU OF INDIAN AFFAIRS, FORT HALL AGENCY

A. THE WATER SUPPLIED FROM THE FOLLOWING SOURCES SHALL CONSTITUTE THE WATER RIGHTS:

Right No. 29-12558

- .i Source: Bannock Creek
- .ii Annual Diversion Volume: 80 AFY
- .iii Diversion Rate: 0.42 CFS
- .iv Annual Volume of Consumptive Use: 50 AFY
- .v Priority Date: April 1, 1887
- .vi Point of Diversion: SWSWSE Sec. 21, Twp 8S, Rge 33E, BM
- .vii Purposes and Period of Use: Irrigation and Stock Water, 3/15 to 11/15
- .viii Place of Use: 20 acres more or less located in the SWNW Sec. 4, Twp 8S, Rge 33E, BM as shown on Attachment C.
- .ix Basis of Right: Bannock Creek Decree
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. To the extent a non-Indian water user is adjudicated a non-Project water right for Project lands, the amount of that non-Project water right will be deducted from the Project water rights at a diversion rate that is not more than the duty of

water per acre for lands within the Fort Hall Irrigation Project.

- b. This land is served by the Pevo Ditch and is irrigated under a rotational procedure that also includes water right nos. 29-00466, 29-00467, 29-12848, 29-00469, 29-00470, 29-00471, 29-00472, 29-00473, 29-00474, 29-12049. The procedure requires up to 3.0 CFS diversion rate at the properties headgate.

Right No. 01-10248

- .i Source: Snake River
- .ii Annual Diversion Volume: 60,000 AFY
- .iii Diversion Rate: 260 CFS
- .iv Annual Volume of Consumptive Use: 33,222 AFY
- .v Priority Date: December 14, 1891
- .vi Point of Diversion:
 - SESWNE Sec 31 Twp 1N Rge 37E BM
 - (Snake River into Reservation Canal)
 - Points of Injection:
 - NESWSE Sec 24 Twp 2S Rge 36E BM
 - (Reservation Canal into Blackfoot River)
 - Points of Rediversion:
 - NENENE Sec 13 Twp 3S Rge 35E BM
 - (Blackfoot River into Fort Hall Main Canal)
 - NWNENW Sec 14 Twp 3S Rge 35E BM
 - (Blackfoot River into North Canal)

- .vii Purpose and Period of Use: Irrigation, 3/15 to 11/15
- .viii Place of Use: 13,630.13 acres within the Fort Hall Irrigation Project. This right combined with water right nos. 27-11560, 27-11561 and 25-13615 may be used to irrigate not more than 12,667.2 acres within the 13,630.13 Project acres.
- .ix Basis of Right: Rexburg Decree for Snake River
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. This right is used in combination with water right no. 27-11560. The combined diversion rate of this right and water right no. 27-11560 shall not exceed 260 CFS and the combined diversion volume shall not exceed 60,000 AFY.
 - b. To the extent a non-Indian water user is adjudicated a non-Project water right for Project lands, the amount of that non-Project water right will be deducted from the Project water rights at a diversion rate that is not more than the duty of water per acre for lands within the Fort Hall Irrigation Project.
 - c. As the United States and owners of lands within the ceded area relinquish their rights to use water under this right on the Project lands the cap on the annual diversion rate and volume of water right no. 01-10223 shall be increased by a like amount until the ultimate diversion rate of 470 c.f.s. and

ultimate diversion volume of 115,000 AFY for right no. 01-10223 are reached.

- d. This water right and water right nos. 27-11560, 27-11561 and 25-13615 are to be used on Project lands. The total annual volume of consumptive use from these rights shall not exceed 33,222 AFY.

Right No. 27-11560

- .i Source: Sand Creek
- .ii Annual Diversion Volume: 60,000 AFY
- .iii Diversion Rate: 260 CFS
- .iv Annual Volume of Consumptive Use: Included in water right no. 01-10248
- .v Priority Date: April 4, 1914
- .vi Point of Diversion:
 - NENWNW Sec. 7, Twp 2S, Rge 37E, BM
 - (Sand Creek into Reservation Canal)
 - Points of Injection:
 - NESWSE Sec 24 Twp 2S Rge 36 E BM
 - (Reservation Canal into Blackfoot River)
 - Points of Rediversion:
 - NENENE Sec 13 Twp 3S Rge 35 E BM
 - (Blackfoot River into Fort Hall Main Canal)
 - NWNENW Sec 14 Twp 3S Rge 35 E BM
 - (Blackfoot River into North Canal)
- .vii Purpose and Period of Use: Irrigation, 3/15 to 11/15

- .viii Place of Use: 13,630.13 acres within the Fort Hall Irrigation Project. This right combined with water right nos. 01-10248, 27-11561 and 25-13615 may be used to irrigate not more than 12,667.2 acres within the 13,630.13 Project acres.
- .ix Basis of Right: Beneficial Use
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
- a. This right is used in combination with water right no. 01-10248. The combined diversion rate of this water right and water right no. 01-10248 shall not exceed 260 CFS and the combined diversion volume shall not exceed 60,000 AFY.
 - b. To the extent a non-Indian water user is adjudicated a non-Project water right for Project lands, the amount of that non-Project water right will be deducted from the Project water rights at a diversion rate that is not more than the duty of water per acre for lands within the Fort Hall Irrigation Project.
 - c. As the United States and owners of lands within the ceded area relinquish their rights to use water under this water right on the Project lands, the cap on the annual diversion rate and annual diversion volume of water right no. 01-10223 shall be increased by a like amount until the ultimate diversion rate of 470 c.f.s and ultimate diversion

volume of 115,000 AFY for right no. 01-10223 are reached.

- d. This water right and water right nos. 01-10248, 27-11561 and 25-13615 are to be used on Project lands. The total annual volume of consumptive use from these rights shall not exceed 33,222 AFY.
- e. This right shall be exercised in accordance with provision .x.d of water right no. 01-10223.

Right No. 27-11561

- .i Source: Blackfoot River
- .ii Annual Diversion Volume: 25,500 AFY
- .iii Diversion Rate: Not Limited
- .iv Annual Volume of Consumptive Use: Included in water right no. 01-10248
- .v Priority Date: September 3, 1907
- .vi Points of Diversion:
 - NWNE Sec 12 Twp 5S Rge 40E BM (Blackfoot River into Blackfoot Reservoir)
 - Points of Rediversion:
 - SENWNW Sec 7 Twp 2S Rge 38E BM
(Blackfoot River into Little Indian Canal)
 - NENENE Sec 13 Twp 3S Rge 35E BM
(Blackfoot River into Fort Hall Main Canal)
 - NWNENW Sec 14 Twp 3S Rge 35E BM
(Blackfoot River into North Canal)

- .vii Purposes and Periods of Use:
 - Storage for Irrigation, 1/1 to 12/31
 - Irrigation from Storage, 3/15 to 11/15
- .viii Place of Use: 13,630.13 acres within the Fort Hall Irrigation Project. This right combined with water right nos. 01-10248, 27-11560 and 25-13615 may be used to irrigate not more than 12,667.2 acres within the 13,630.13 Project acres.
- .ix Basis of Right: License
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. To the extent a non-Indian water user is adjudicated a non-Project water right for Project lands, the amount of that non-Project water right will be deducted from the Project water rights at a diversion rate that is not more than the duty of water per acre for lands within the Fort Hall Irrigation Project.
 - b. The rediversion of water from storage under this water right and water right nos. 01-10248, 27-11560 and 25-13615 is to be used on Project lands. The total annual volume of consumptive use from these rights shall not exceed 33,222 AFY.
 - c. The total annual diversion under this right and water right no. 25-13615 shall not exceed 25,500 AFY.

- d. The total annual volume of water stored under this right and water right no. 27-02007 shall not exceed 348,000 acre-feet.
- e. The first 25,500 AF of water stored each year in Blackfoot Reservoir and Grays Lake will be used to satisfy the 25,500 AFY diversion described in this water right and water right no. 25-13615.

Right No. 25-13615

- .i Source: Grays Lake
- .ii Annual Diversion Volume: 25,500 AFY
- .iii Diversion Rate: Not Limited
- .iv Annual Volume of Consumptive Use: Included in water right no. 01-10248
- .v Priority Date: August 23, 1919
- .vi Points of Diversion:
 - SWSWSW Sec 1 Twp 5S Rge 42E BM
(Grays Lake/Clarks Cut Canal)
 - Points of Rediversion:
 - NWNE Sec 12 Twp 5S Rge 40E BM (Blackfoot Reservoir)
 - SENWNW Sec 7 Twp 2S Rge 38E BM
(Blackfoot River into Little Indian Canal)
 - NENENE Sec 13 Twp 3S Rge 35E BM
(Blackfoot River into Fort Hall Main Canal)
 - NWNENW Sec 14 Twp 3S Rge 35E BM
(Blackfoot River into North Canal)

- .vii Purposes and Periods of Use:
 - Storage for Irrigation, 1/1 to 12/31
 - Irrigation from Storage, 3/15 to 11/15
- .viii Place of Use: 13,630.13 acres within the Fort Hall Irrigation Project. This right combined with water right nos. 01-10248, 27-11560 and 27-11561 may be used to irrigate not more than 12,667.2 acres within the 13,630.13 Project acres.
- .ix Basis of Right: Permits
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. To the extent a non-Indian water user is adjudicated a non-Project water right for Project lands, the amount of that non-Project water right will be deducted from the Project water rights at a diversion rate that is not more than the duty of water per acre for lands within the Fort Hall Irrigation Project.
 - b. The rediversion of water from storage under this water right and water right nos. 01-10248, 27-11560 and 27-11561 is to be used on Project lands. The total annual volume of consumptive use from these rights shall not exceed 33,222 AFY.
 - c. The total annual diversion under this right and water right no. 27-11561 shall not exceed 25,500 AFY.

- d. The total annual volume of water stored under this right and water right no. 25-02160 shall not exceed 100,000 acre-feet.
- e. The first 25,500 AF of water stored each year in Blackfoot Reservoir and Grays Lake will be used to satisfy the 25,500 AFY diversion volume of this right and water right no. 27-11561.

Right No. 29-12559

- .i Source: Groundwater
- .ii Annual Diversion Volume: 277 AFY
- .iii Diversion Rate: 2.06 CFS
- .iv Annual Volume of Consumptive Use: 236 AFY
- .v Priority Date: August 23, 1954
- .vi Point of Diversion:
S1/2SESW Sec. 28, Twp 6S, Rge 32E, BM
- .vii Purpose and Period of Use: Irrigation, 3/15 to 11/15
- .viii Place of Use: 102.58 acres located in the NESW and SESW, Sec. 28, Twp 6S, Rge 32E, and the NENW Sec. 33, Twp 6S, Rge 32E, BM as shown on Attachment B.
- .ix Basis of Right: Act of August 31, 1954 (Michaud Act), 68 Stat. 1026
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. To the extent a non-Indian water user is adjudicated a non-Project water right for Project lands, the amount of that non-Project water right

will be deducted from the Project water rights at a diversion rate that is not more than the duty of water per acre for lands within the Fort Hall Irrigation Project.

- b. The pumping capacity for this diversion is actually 1500 GPM.

Right No. 29-12560

- .i Source: Groundwater
- .ii Annual Diversion Volume: 507 AFY
- .iii Diversion Rate: 3.75 CFS
- .iv Annual Volume of Consumptive Use: 431 AFY
- .v Priority Date: August 23, 1954
- .vi Points of Diversion: PODs located at the following locations:
 - SWSESW Sec. 3, Twp 7S, Rge 32E, BM
 - SENWSE Sec. 3, Twp 7S, Rge 32E, BM
 - NWNWSW Sec. 2, Twp 7S, Rge 32E, BM
 - NESENW Sec. 2, Twp 7S, Rge 32E, BM
 - NWNENE Sec. 1, Twp 7S, Rge 32E, BM
 - SWNWNW Sec. 6, Twp 7S, Rge 33E, BM
 - NESESW Sec. 6, Twp 7S, Rge 33E, BM
 - NESESW Sec. 6, Twp 7S, Rge 33E, BM
 - SWSWSW Sec. 30, Twp 6S, Rge 33E, BM
- .vii Purpose and Period of Use: Irrigation, 3/15 to 11/15
- .viii Place of Use: 187.7 acres as shown on Attachment B.

- .ix Basis of Right: Act of August 31, 1954 (Michaud Act),
68 Stat. 1026
- .x Matters Necessary for Definition, Clarification or
Administration of the Right:
 - a. The lands identified in this right may also be
supplied with a maximum annual diversion of 616 AF
of water from the Portneuf River pumping plant
under an exchange of federal contract storage
rights described in Article 7.3.1. of the 1990 Fort
Hall Indian Water Rights Agreement. This right and
the water supplied from the Portneuf River provide
a single water supply for these lands.
 - b. This right is to supplement the surface water
supply and will be used at the discretion of the
Fort Hall Irrigation Project manager to optimize
the available water supply for the Project.
 - c. To the extent a non-Indian water user is
adjudicated a non-Project water right for Project
lands, the amount of that non-Project water right
will be deducted from the Project water rights at a
diversion rate not more than the duty of water per
acre for lands within the Fort Hall Irrigation
Project.

Right No. 27-11562

- .i Source: Blackfoot River and tributaries and the
Blackfoot Reservoir and tributaries

- .ii Annual Diversion Volume: 14.54 AFY
- .iii Diversion Rate; 0.20 CFS
- .iv Annual Volume of Consumptive Use: De minimis
- .v Priority Date: March 1, 1907
- .vi Points of Diversion:
 - Twp 7S, Rge 41E, BM
 - Twp 7S, Rge 42E, BM
 - Twp 6S, Rge 41E, BM
 - Twp 6S, Rge 42E, BM
 - Twp 5S, Rge 40E, BM
 - Twp 5S, Rge 41E, BM
 - Twp 5S, Rge 42E, BM
 - Twp 4S, Rge 40E, BM
 - Twp 4S, Rge 41E, BM
- .vii Purpose and Period of Use: Stock Water, 1/1 to 12/31
- .viii Place of Use: Those lands used by the Bureau of Indian Affairs for stock grazing in:
 - Twp 7S, Rge 41E, BM
 - Twp 7S, Rge 42E, BM
 - Twp 6S, Rge 41E, BM
 - Twp 6S, Rge 42E, BM
 - Twp 5S, Rge 40E, BM
 - Twp 5S, Rge 41E, BM
 - Twp 5S, Rge 42E, BM
 - Twp 4S, Rge 40E, BM
 - Twp 4S, Rge 41E, BM
- .ix Basis of Right: Beneficial Use

- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. Water will be used for stock water for range cattle for the grazing rights associated with Blackfoot Reservoir.

Right No. 27-11563

- .i Source: Blackfoot River and tributaries and the Equalizing Reservoir and tributaries
- .ii Annual Diversion Volume: 0.70 AFY
- .iii Diversion Rate: 0.01 CFS
- .iv Annual Volume of Consumptive Use: De minimis
- .v Priority Date: March 1, 1907
- .vi Points of Diversion:
 - Twp 3S, Rge 36E, BM
 - Twp 3S, Rge 35E, BM
- .vii Purpose and Period of Use: Stock water, 1/1 to 12/31
- .viii Place of Use: Those lands used by the Bureau of Indian Affairs for stock grazing in:
 - Twp 3S, Rge 36E, BM
 - Twp 3S, Rge 35E, BM
- .ix Basis of Right: Beneficial Use
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. Water will be used for stock water for range cattle for the grazing rights associated with the Equalizing Reservoir.

Right No. 25-13616

- .i Source: Meadow Creek and tributaries and Grays Lake and tributaries
- .ii Annual Diversion Volume: 14.54 AFY
- .iii Diversion Rate: 0.20 CFS
- .iv Annual Volume of Consumptive Use: De minimis
- .v Priority Date: March 1, 1907
- .vi Points of Diversion:
 - Twp 3S, Rge 43E, BM
 - Twp 4S, Rge 42E, BM
 - Twp 4S, Rge 43E, BM
 - Twp 5S, Rge 42E, BM
 - Twp 5S, Rge 43E, BM
- .vii Purpose and Period of Use: Stock water, 1/1 to 12/31
- .viii Place of Use: Those lands used by the Bureau of Indian Affairs for stock grazing in:
 - Twp 3S, Rge 43E, BM
 - Twp 4S, Rge 42E, BM
 - Twp 4S, Rge 43E, BM
 - Twp 5S, Rge 42E, BM
 - Twp 5S, Rge 43E, BM
- .ix Basis of Right: Beneficial Use
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. Water will be used for stock water for range cattle for the grazing rights associated with Grays Lake.

Right No. 27-11564

- .i Source: Groundwater
- .ii Annual Diversion Volume: 224 AFY
- .iii Diversion Rate: 1.84 CFS
- .iv Annual Volume of Consumptive Use: 164 AFY
- .v Priority Date: July 3, 1868
- .vi Point of Diversion: SWNESW Sec. 36, Twp 4S, Rge 34E, BM (two POD)
- .vii Purposes and Periods of Use: Domestic, Commercial, Municipal, and Industrial Uses, 1/1 to 12/31; Irrigation, 3/15 to 11/15
- .viii Place of Use: Various locations on the S1/2 Sec. 36, Twp 4S, Rge 34E, BM (approximately 80 acres)
- .ix Basis of Right: Federal Reserved Right
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. The water will be used by the United States Department of Interior, Bureau of Indian Affairs, Fort Hall Agency, for irrigation of lawns, landscaping, and domestic purposes at the Fort Hall Agency complex.
 - b. The pumping capacity of these wells is 1300 GPM.

Right No. 29-12561

- .i Source: Groundwater
- .ii Annual Diversion Volume: 1.20 AFY

- .iii Diversion Rate: 0.04 CFS
- .iv Annual Volume of Consumptive Use: De minimis
- .v Priority Date: August 23, 1954
- .vi Point of Diversion: SESESW Sec. 6, Twp 7S, Rge 33E, BM
- .vii Purpose and Period of Use: Domestic, 1/1 to 12/31
- .viii Place of Use: SESESW Sec. 6, Twp 7S, Rge 33E, BM
- .ix Basis of Right: Beneficial Use
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. The water will be used by the United States Department of Interior, Bureau of Indian Affairs, Fort Hall Agency, for domestic purposes at the home site at the Bannock Creek Pumping Station.

Right No. 29-12562

- .i Source: Groundwater
- .ii Annual Diversion Volume: 15.80 AFY
- .iii Diversion Rate: 0.04 CFS
- .iv Annual Volume of Consumptive Use: De minimis
- .v Priority Date: August 23, 1954
- .vi Point of Diversion: NESESW Sec. 6, Twp 7S, Rge 33E, BM
- .vii Purpose and Period of Use: Pump Cooling, 3/15 to 11/15
- .viii Place of Use: NESESW Sec. 6, Twp 7S, Rge 33E, BM
- .ix Basis of Right: Beneficial Use
- .x Matters Necessary for Definition, Clarification or Administration of the Right:

- a. The water will be used by the United States Department of Interior, Bureau of Indian Affairs, Fort Hall Agency, for pump cooling purposes at the Bannock Creek Pumping Station.

Right No. 29-12563

- .i Source: Groundwater
- .ii Annual Diversion Volume: 1.20 AFY
- .iii Diversion Rate: 0.04 CFS
- .iv Annual Volume of Consumptive Use: De minimis
- .v Priority Date: August 23, 1954
- .vi Point of Diversion: SWSESW Sec. 36, Twp 5S, Rge 33E, BM
- .vii Purpose and Period of Use: Domestic, 1/1 to 12/31
- .viii Place of Use: SWSESW Sec. 36, Twp 5S, Rge 33E, BM
- .ix Basis of Right: Beneficial Use
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. The water will be used by the United States Department of Interior, Bureau of Indian Affairs, Fort Hall Agency, for domestic purposes at the home site at the Portneuf Pumping Station.

Right No. 29-12564

- .i Source: Groundwater
- .ii Annual Diversion Volume: 1.20 AFY
- .iii Diversion Rate: 0.04 CFS

- .iv Annual Volume of Consumptive Use: De minimis
- .v Priority Date: August 23, 1954
- .vi Point of Diversion: SWSESW Sec. 36, Twp 5S, Rge 33E, BM
- .vii Purpose and Period of Use: Domestic, 1/1 to 12/31
- .viii Place of Use: SWSESW Sec. 36, Twp 5S, Rge 33E, BM
- .ix Basis of Right: Beneficial Use
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. The water will be used by the United States Department of Interior, Bureau of Indian Affairs, Fort Hall Agency, for domestic use at the Fort Hall Irrigation Project Office at the Portneuf Pumping Station.

Right No. 27-11565

- .i Source: Groundwater
- .ii Annual Diversion Volume: 12.40 AFY
- .iii Diversion Rate: 0.04 CFS
- .iv Annual Volume of Consumptive Use: De minimis
- .v Priority Date: May 31, 1957
- .vi Point of Diversion: NESE, Sec. 9, Twp 6S, Rge 42E, BM
- .vii Purposes and Period of Use: Domestic and Commercial, 1/1 to 12/31
- .viii Place of Use: NESE Sec. 9, Twp 6S, Rge 42E, BM
- .ix Basis of Right: Beneficial Use

- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. The water will be used by the United States Department of Interior, Bureau of Indian Affairs, Fort Hall Agency, for domestic use at the home site at the White Locks Marina.

Right No. 29-12565

- .i Source: Groundwater
- .ii Annual Diversion Volume: 15.80 AFY
- .iii Diversion Rate: 0.04 CFS
- .iv Annual Volume of Consumptive Use: De minimis
- .v Priority Date: August 23, 1954
- .vi Point of Diversion: SESESW Sec. 36, Twp 5S, Rge 33E, BM
- .vii Purpose and Period of Use: Pump Cooling, 3/15 to 11/15
- .viii Place of Use: SESESW Sec. 36, Twp 5S, Rge 33E, BM
- .ix Basis of Right: Beneficial Use
- .x Matters Necessary for Definition, Clarification or Administration of the Right:
 - a. The water will be used by the United States Department of Interior, Bureau of Indian Affairs, Fort Hall Agency, for pump cooling purposes at the Portneuf Pumping Station.

B. GENERAL PROVISION APPLICABLE ONLY TO WATER RIGHTS HELD BY THE UNITED STATES FOR USE ON NON-INDIAN OWNED LANDS WITHIN THE FORT HALL IRRIGATION PROJECT AND FOR THE BUREAU OF INDIAN AFFAIRS, FORT HALL AGENCY

1. Nothing in the Decree prohibits the transfer of any state law water right herein decreed in this Section III, in accordance with applicable or successor Idaho Code provisions.

IV. **GENERAL PROVISIONS APPLICABLE TO ALL RIGHTS IN THIS DECREE**

1. The Court hereby recognizes and respects the parties' disclaimers and reservations of rights contained in Article 11 and elsewhere in the 1990 Agreement.
2. Entry of judgment as set forth above has been consented to by the parties without trial or adjudication of fact or law herein and without the judgment constituting evidence or an admission by any party, with respect to any issue. Neither the Agreement nor this Decree shall be used as precedent for any other federal reserved water right claim.
3. The description of the water rights in this decree shall govern in the event of a conflict with the description of the water rights contained in the Agreement.
4. The parties to the Agreement and this Decree have relied upon the terms and conditions of the Michaud Contract, which the United States and/or the Tribes entered into as part of the authorization of the Michaud Division. Articles 7.3.3 and 7.3.4 of the

Agreement refer to the exchange of water for delivery and use of federal contract storage water on the Michaud Division lands. This exchange, delivery and use of federal contract storage water shall be in accordance with and limited by Section 3(b) of the Michaud Act and all the provisions of Articles 8 and 15 of the Michaud Contract. Except as expressly provided by Article 7.3.4 of the Agreement, nothing in the Agreement or in this Decree alters the Michaud Contract.

5. Nothing in this Decree is intended to limit the authority of the United States to redesignate lands within the Fort Hall Irrigation Project under applicable statutes and regulations as eligible to receive project water.
6. This Decree supersedes all prior decrees, except as otherwise provided in this decree, as they relate to the rights to the use of water held by the Shoshone-Bannock Tribes, including but not limited to the following:
 - .1 United States v. Daniels, (D. Idaho April 9, 1907).
 - .2 United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928).
 - .3 Smith v. City of Pocatello, Bannock County Case No. 6669.
 - .4 Rexburg Decree

7. The water rights described in this Decree are in full satisfaction of all water rights or claims to water rights of the Shoshone-Bannock Tribes, its members, and its allottees within the Upper Snake River basin as well as on behalf of all water rights or claims of the United States for the Shoshone-Bannock Tribes, its members, and its allottees within the Upper Snake River basin. This Decree is also in full satisfaction of all water rights or claims to water rights by the United States for the Bureau of Indian Affairs, Fort Hall Agency and the Fort Hall Irrigation Project.
8. Each of the parties, to the Snake River Basin Adjudication, their agents, servants, employees, attorneys, counselors, heirs, administrators, successors, and assigns, and every person or persons acting by, or under, or in assistance of them or any of them, be and they are hereby forever and perpetually restrained and enjoined from in any manner using the waters from the sources described in this Consent Decree, in any other quantity or in any other manner than is herein set out,

defined, and decreed, and each of the parties shall respect the superior rights of all others adjudicated in the SRBA.

Dated this 2 day of ~~July~~ ^{August}, 1995.

DANIEL C. HURLBUTT JR.

DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

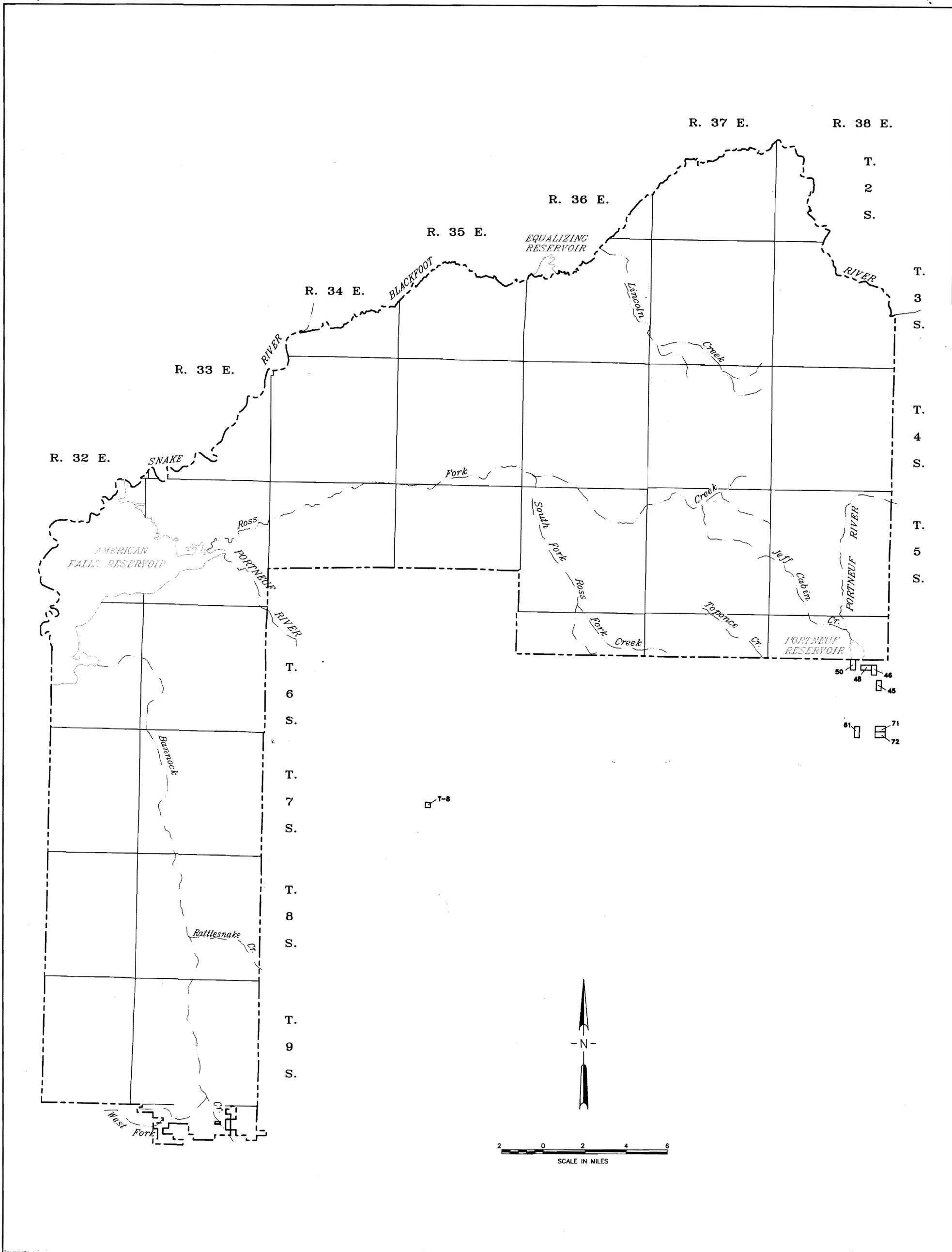
54(b) CERTIFICATE

With respect to the issues determined by the above Partial Final Consent Decree it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED the 2 day of ~~July~~ ^{August}, 1995.

DANIEL C. HURLBUTT JR.

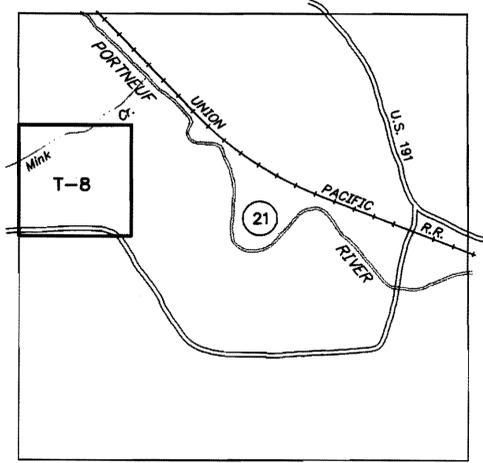
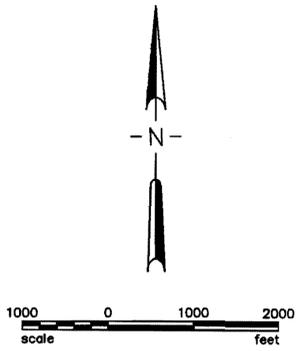
DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication



ATTACHMENT "A" TO THE PARTIAL FINAL CONSENT DECREE
 DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES
 TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN.

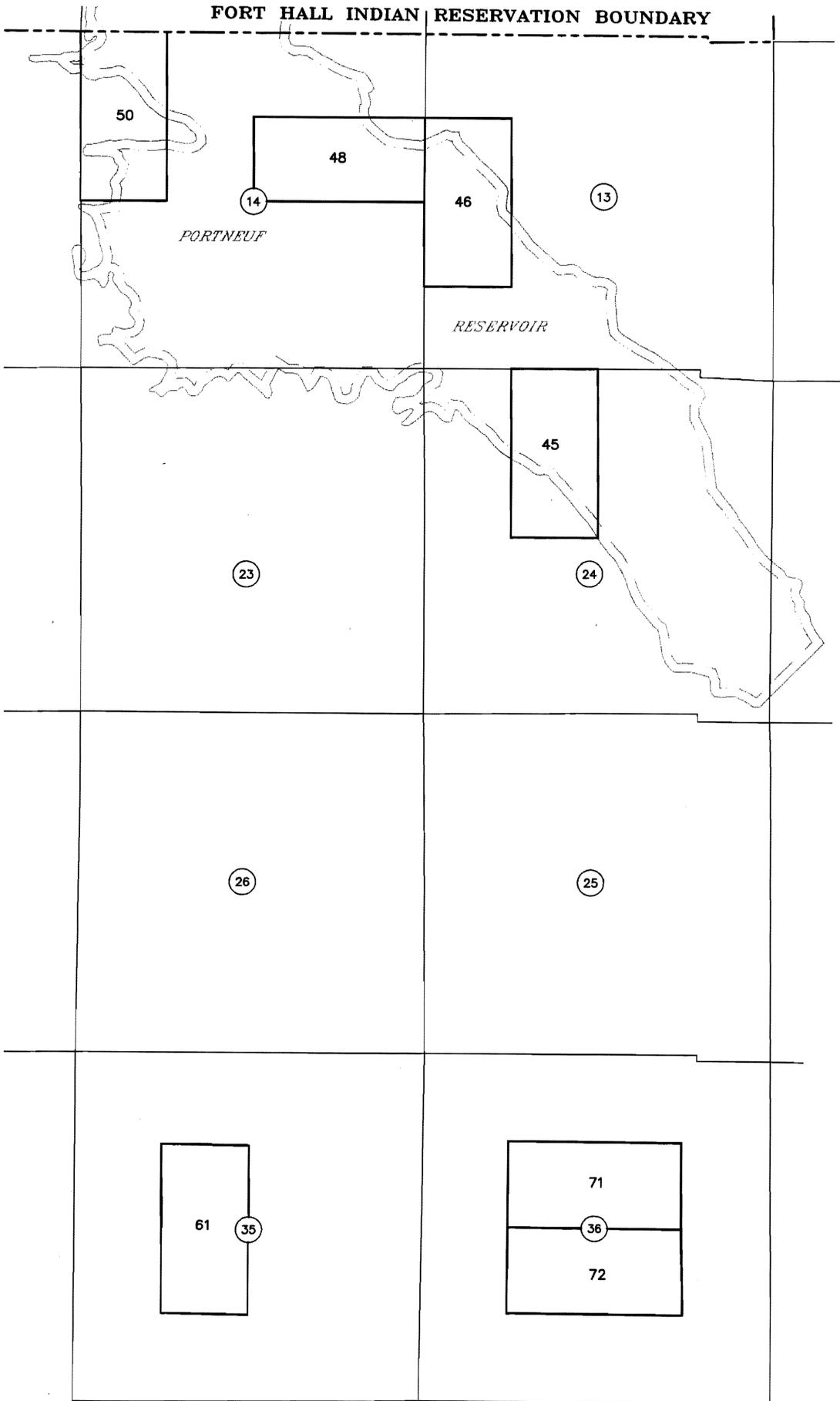
FORT HALL RESERVATION BOUNDARY

R. 35 E.

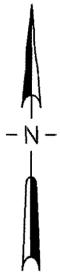


T.
7
S.

FORT HALL INDIAN RESERVATION BOUNDARY



T.
6
S.



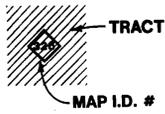
R. 38 E.

R. 39 E.

ATTACHMENT "A" TO THE PARTIAL FINAL CONSENT DECREE
DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES
TO THE USE OF WATER IN TO THE UPPER SNAKE RIVER BASIN.

SELECTED INDIAN ALLOTMENTS

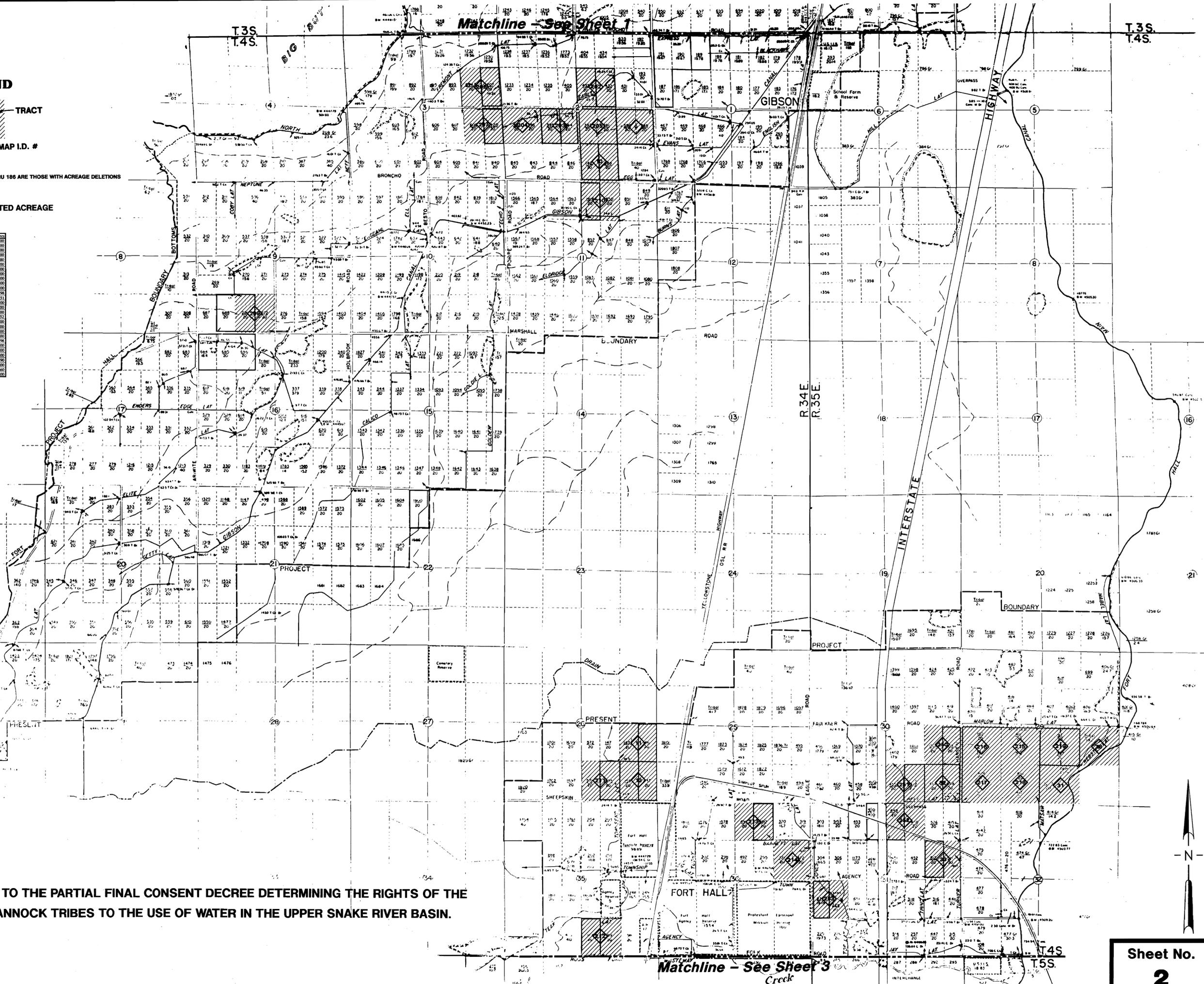
LEGEND



NOTE: TRACTS 1 THRU 186 ARE THOSE WITH ACREAGE DELETIONS

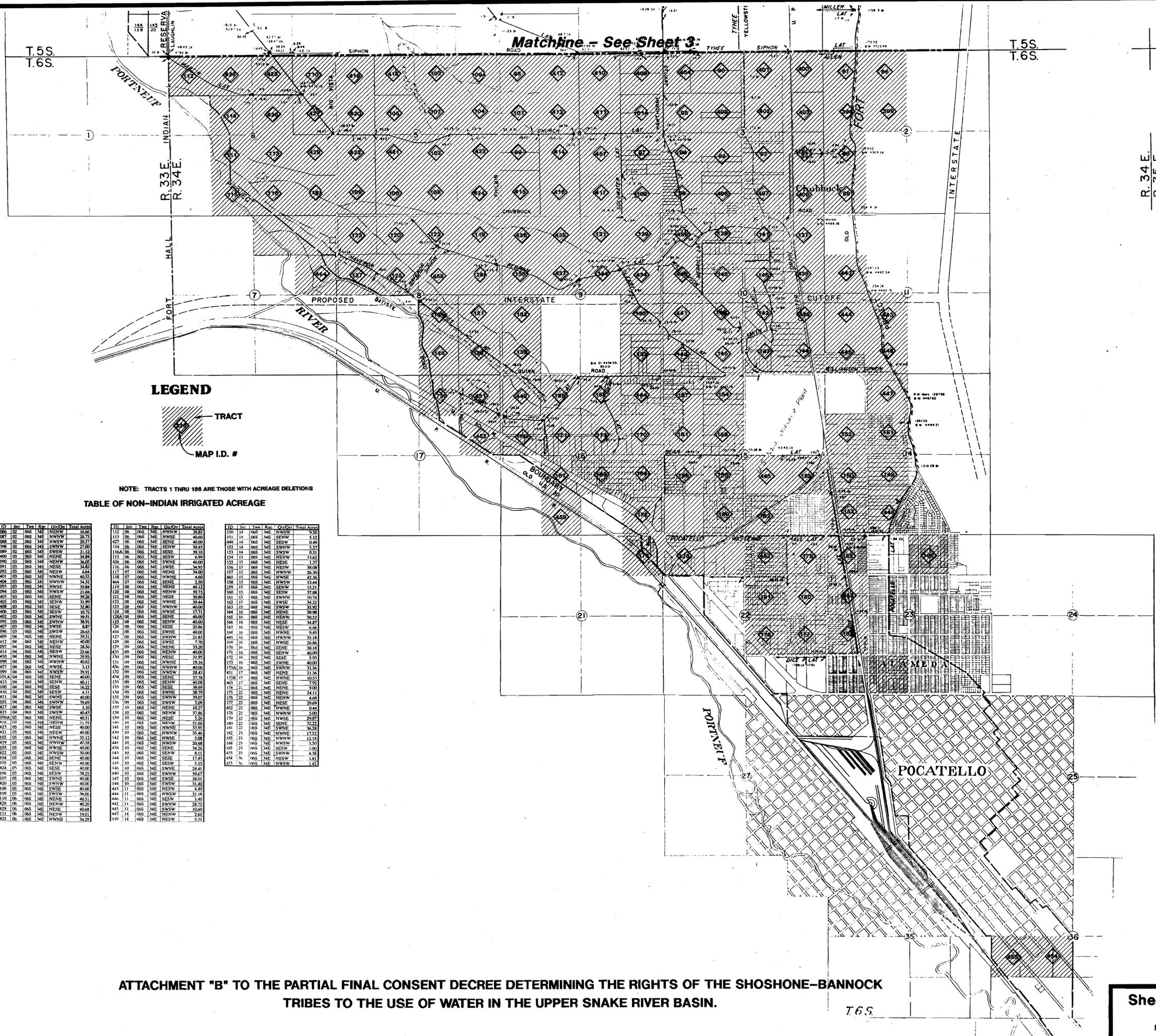
TABLE OF NON-INDIAN IRRIGATED ACREAGE

ID	Sec	Trct	Ric	Qtr	Total Acres
009	02	04S	34E	NESW	40.00
203	02	04S	34E	NESW	40.00
205	02	04S	34E	NWSE	40.00
204	02	04S	34E	NWSW	20.00
207	02	04S	34E	SWSE	40.00
010	02	04S	34E	SWSE	40.00
207	03	04S	34E	NESW	20.00
206	03	04S	34E	SENE	20.00
209	09	04S	34E	SESW	40.00
210	11	04S	34E	NWNE	19.00
011	26	04S	34E	NESW	10.00
012	26	04S	34E	SESE	37.98
211	26	04S	34E	SWSE	12.51
212	35	04S	34E	SWSE	40.00
213	36	04S	34E	NWNE	20.00
214	36	04S	34E	SENE	11.90
013	29	04S	35E	NESW	6.52
215	29	04S	35E	NESW	40.00
219	29	04S	35E	NWSE	40.00
216	29	04S	35E	NWSW	40.00
218	29	04S	35E	SESW	40.00
031	29	04S	35E	SWSE	10.98
217	29	04S	35E	SWSW	40.00
220	30	04S	35E	NESW	20.00
032	30	04S	35E	SESE	40.00
251	30	04S	35E	SWSE	19.90
252	31	04S	35E	NWNE	20.00
253	31	04S	35E	NWSW	17.60
033	31	04S	35E	SENE	20.00



ATTACHMENT "B" TO THE PARTIAL FINAL CONSENT DECREE DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN.

FT. HALL IRRIGATION PROJECT WITH NON-INDIAN LANDS DELINEATED



T.5S.
T.6S.

T.5S.
T.6S.

R. 34 E.
R. 35 E.

LEGEND

TRACT

MAP I.D. #

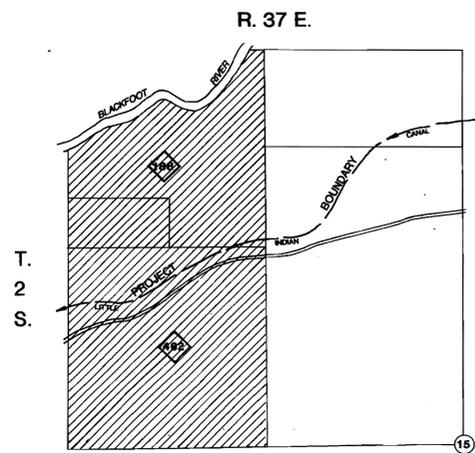
NOTE: TRACTS 1 THRU 186 ARE THOSE WITH ACREAGE DELETIONS

TABLE OF NON-INDIAN IRRIGATED ACREAGE

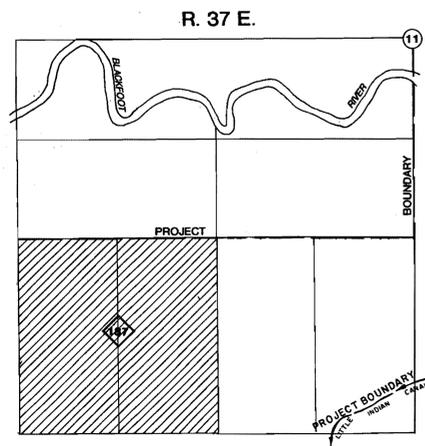
ID	Sec	Twp	Range	Quadrant	Total Acres
086	02	06S	34E	NW	16.66
087	02	06S	34E	NW	29.73
088	02	06S	34E	NW	20.57
089	02	06S	34E	NW	21.00
090	02	06S	34E	NW	21.12
091	02	06S	34E	NW	34.84
092	02	06S	34E	NW	30.05
093	02	06S	34E	NW	34.83
094	02	06S	34E	NW	1.64
095	02	06S	34E	NW	40.55
096	02	06S	34E	NW	34.32
097	02	06S	34E	NW	39.84
098	02	06S	34E	NW	21.04
099	02	06S	34E	NW	39.26
100	02	06S	34E	NW	31.99
101	02	06S	34E	NW	32.80
102	02	06S	34E	NW	19.72
103	02	06S	34E	NW	39.51
104	02	06S	34E	NW	38.91
105	02	06S	34E	NW	8.87
106	02	06S	34E	NW	26.65
107	02	06S	34E	NW	29.51
108	02	06S	34E	NW	40.00
109	02	06S	34E	NW	28.56
110	02	06S	34E	NW	23.66
111	02	06S	34E	NW	39.93
112	02	06S	34E	NW	40.62
113	02	06S	34E	NW	3.13
114	02	06S	34E	NW	39.51
115	02	06S	34E	NW	40.00
116	02	06S	34E	NW	40.00
117	02	06S	34E	NW	40.00
118	02	06S	34E	NW	40.00
119	02	06S	34E	NW	40.00
120	02	06S	34E	NW	40.00
121	02	06S	34E	NW	40.00
122	02	06S	34E	NW	40.00
123	02	06S	34E	NW	40.00
124	02	06S	34E	NW	40.00
125	02	06S	34E	NW	40.00
126	02	06S	34E	NW	40.00
127	02	06S	34E	NW	40.00
128	02	06S	34E	NW	40.00
129	02	06S	34E	NW	40.00
130	02	06S	34E	NW	40.00
131	02	06S	34E	NW	40.00
132	02	06S	34E	NW	40.00
133	02	06S	34E	NW	40.00
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135	02	06S	34E	NW	40.00
136	02	06S	34E	NW	40.00
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139	02	06S	34E	NW	40.00
140	02	06S	34E	NW	40.00
141	02	06S	34E	NW	40.00
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143	02	06S	34E	NW	40.00
144	02	06S	34E	NW	40.00
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173	02	06S	34E	NW	40.00
174	02	06S	34E	NW	40.00
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181	02	06S	34E	NW	40.00
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184	02	06S	34E	NW	40.00
185	02	06S	34E	NW	40.00
186	02	06S	34E	NW	40.00
187	02	06S	34E	NW	40.00
188	02	06S	34E	NW	40.00
189	02	06S	34E	NW	40.00
190	02	06S	34E	NW	40.00
191	02	06S	34E	NW	40.00
192	02	06S	34E	NW	40.00
193	02	06S	34E	NW	40.00
194	02	06S	34E	NW	40.00
195	02	06S	34E	NW	40.00
196	02	06S	34E	NW	40.00
197	02	06S	34E	NW	40.00
198	02	06S	34E	NW	40.00
199	02	06S	34E	NW	40.00
200	02	06S	34E	NW	40.00

ATTACHMENT "B" TO THE PARTIAL FINAL CONSENT DECREE DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN.

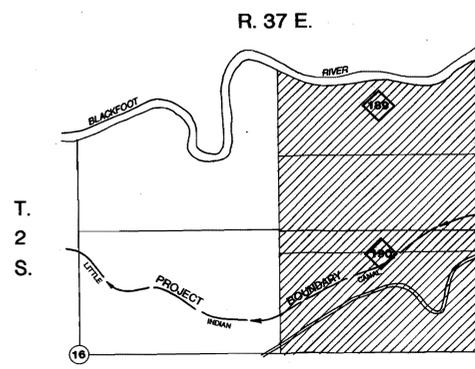
FT. HALL IRRIGATION PROJECT WITH NON-INDIAN LANDS DELINEATED



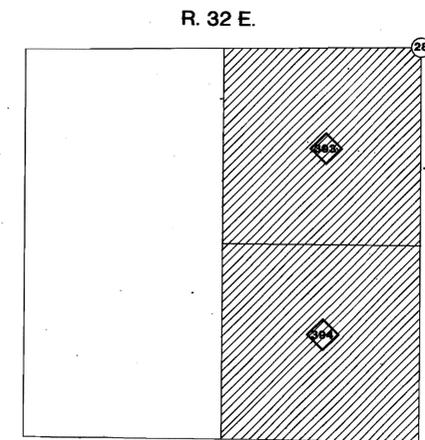
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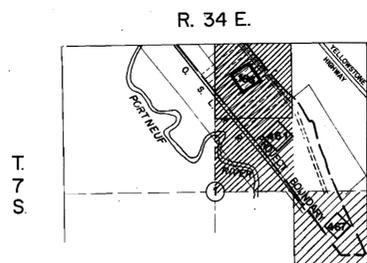
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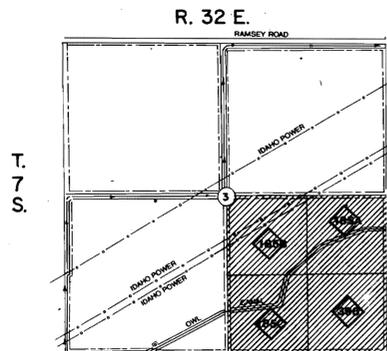
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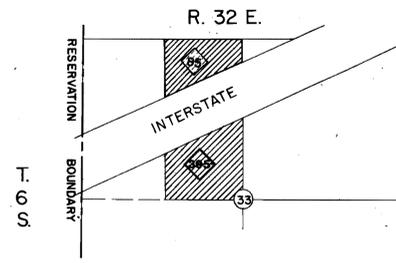
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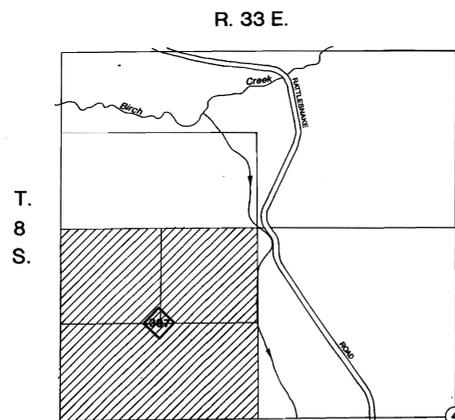
SCALE: 1" = 1000'



SCALE: 1" = 1000'



SCALE: 1" = 1000'



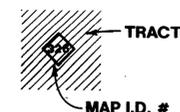
SCALE: 1" = 400'

TABLE OF NON-INDIAN IRRIGATED ACREAGE

ID	Sec	Twp	Range	Quadrant	Total Acres
393	28	06S	32E	NESW	38.10
394	28	06S	32E	SESW	38.10
083	33	06S	32E	NENW	26.38
395	33	06S	32E	SENW	26.46
185A	03	07S	32E	NENE	38.27
185B	03	07S	32E	NWSE	38.26
396	03	07S	32E	SESE	38.30
185C	03	07S	32E	SWSE	38.27
397	04	08S	32E	SWNW	20.00
467	10	07S	34E	NENE	1.63
186	01	07S	34E	NWNE	7.47
461	01	07S	34E	SWNE	0.98
462	15	04	37E	SWNW	7.00
187	11	02S	37E	SWSW	20.00
188	15	02S	37E	NWNW	27.89
189	16	02S	37E	NENE	14.70
190	16	02S	37E	SENE	19.01

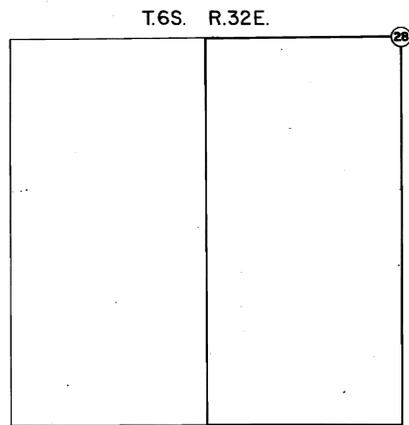
Notes:
 Map ID#s 185a, 185c, 395 and 456 also include supplemental groundwater rights of 187.7 acres referenced in the Non-Indian Negotiated Agreement Article 1.3.2.
 Map ID#s 393 and 394 also include groundwater rights for 102.58 acres referenced in the Non-Indian Negotiated Agreement Article 1.3.1.
 Map ID# 397 contains 20 acres referenced in the Non-Indian Negotiated Agreement Article 1.2.1.

LEGEND

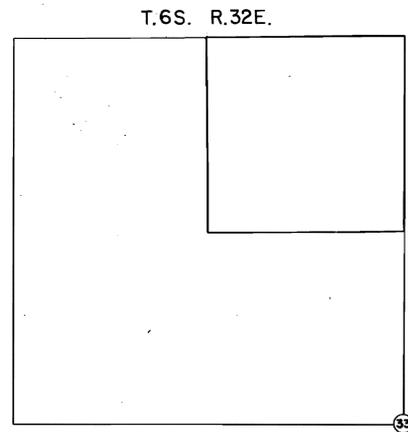


ATTACHMENT "B" TO THE PARTIAL FINAL CONSENT DECREE DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN.

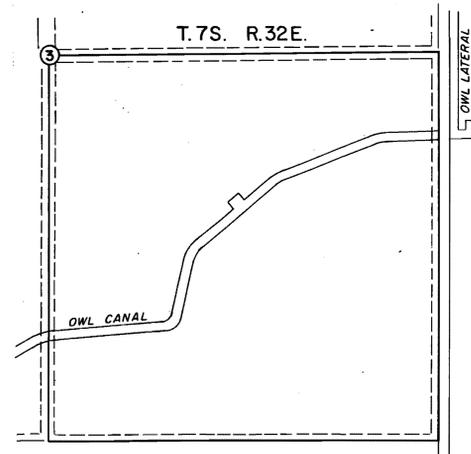
FT. HALL IRRIGATION PROJECT WITH NON-INDIAN LANDS DELINEATED



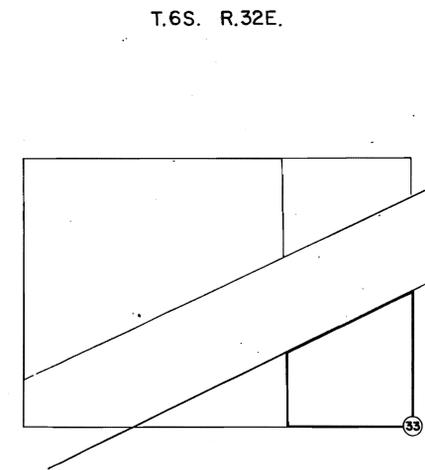
RIGHT NO. 29-12559, SEE NOTE 1
76.20 acres



RIGHT NO. 29-12559, SEE NOTE 1
26.38 acres



RIGHT NO. 29-12560, SEE NOTE 2
153.10 acres



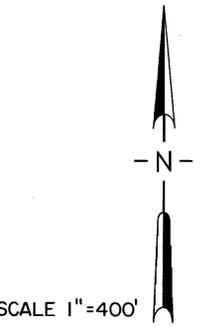
RIGHT NO. 29-12560, SEE NOTE 2
34.60 acres

NOTE 1: RIGHT NO. 29-12559, GROUND WATER USE ONLY.

NOTE 2: RIGHT NO. 29-12560, SERVED BY 507 AFY OF GROUND WATER OR 616 AFY OF STORAGE WATER FROM THE PORTNEUF RIVER PUMPING PLANT UNDER AN EXCHANGE OF FEDERAL CONTRACT STORAGE RIGHTS DESCRIBED IN ARTICLE 7.3.1 OF THE 1994 FORT HALL INDIAN WATER RIGHTS AGREEMENT

ATTACHMENT "B" TO THE PARTIAL FINAL CONSENT DECREE DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN.

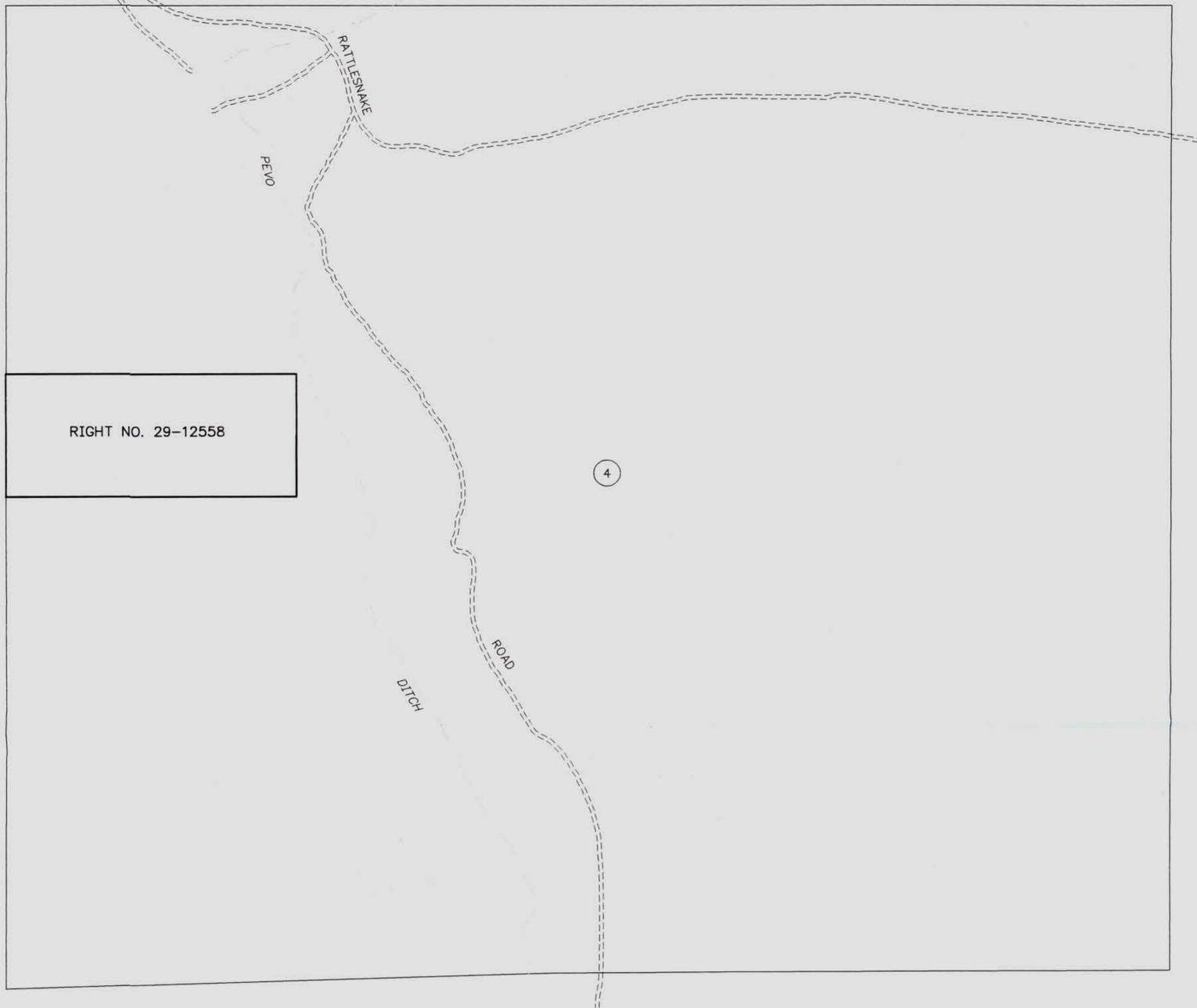
FT. HALL IRRIGATION PROJECT WITH NON-INDIAN LANDS DELINEATED



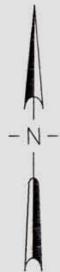
SCALE 1"=400'

Sheet No.
6
of 6

R. 33 E.



T.
8
S.



300 0 300 600
scale feet

ATTACHMENT "C" TO THE PARTIAL FINAL CONSENT DECREE
DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES
TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN.

RIGHT NO. 29-12558

Sheet 1 of 1

ATTACHMENT D

MICHAUD CONTRACT

UNITED STATES
DEPARTMENT OF THE INTERIOR

MEMORANDUM OF AGREEMENT
Between
THE BUREAU OF RECLAMATION
and
THE BUREAU OF INDIAN AFFAIRS
Relating to
Water Supply for
MICHAUD DIVISION OF THE FORT HALL INDIAN RESERVATION, IDAHO

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UNITED STATES
DEPARTMENT OF THE INTERIOR

MEMORANDUM OF AGREEMENT
Between
THE BUREAU OF RECLAMATION
and
THE BUREAU OF INDIAN AFFAIRS

Relating to
Water Supply for
MICHAUD DIVISION OF THE FORT HALL INDIAN RESERVATION

1. WHEREAS, the Congressional act, being Public Law 741 as enacted by the 83rd Congress, and approved August 31, 1954 (68 Stat. 1026) authorizing the development of not more than 21,000 acres of irrigable land in the Michaud Division of the Fort Hall Indian Reservation requires that there be made appropriate arrangements and limitations for the water supply for said lands prior to the construction of the irrigation works, and

2. WHEREAS, the parties to this agreement are desirous of making the aforesaid arrangements and limitations;

NOW, THEREFORE, the Bureau of Reclamation, hereinafter called Reclamation, and the Bureau of Indian Affairs, hereinafter called Indian Bureau, with the approval of the Secretary, do hereby and mutually agree as follows:

Definitions

3. The following terms hereinafter used in this agreement shall have the following respective meanings:

(a) "Secretary" shall mean the Secretary of the Interior or his duly authorized representative.

(b) "Reserved works" shall mean Palisades Dam and Reservoir, American Falls Dam and Reservoir, and all buildings, roads, telephone lines, and other works incidental and appurtenant to those works.

(c) "Irrigation season" shall mean a period of each year beginning April 1 and ending October 31 of that year.

(d) "Storage season" shall mean, with respect to the reservoir involved, the period beginning October 1 of one year and ending during the next year when, as to the particular reservoir, no more water is available for storage.

(e) "Reservoir system" shall mean the existing and authorized Federal reclamation reservoirs on the Snake River and its tributaries down to and including Lake Walcott.

(f) "Upper valley" shall mean the irrigated areas of the Snake River Basin that are served by canals diverting from the Snake River and its tributaries above American Falls Dam.

(g) "Lower valley" shall mean the irrigated areas of the Snake River Basin that are served by canals diverting from the Snake River and its tributaries between American Falls Dam and Milner Dam.

(h) "Watermaster" shall mean the officer of the State of Idaho charged by law with the distribution of Snake River water in the lower and upper valleys, or such other officer properly authorized by law and designated by mutual agreement of the Secretary and the Advisory Committee.

(i) "Advisory Committee" shall mean the committee defined by article 14 of this agreement or its duly authorized representative.

(j) "Delivery" when used herein in relation to stored water, shall mean direct delivery from the reservoir system and delivery accomplished in the manner provided in article 8.

(k) "Michaud Division system" shall mean the irrigation system authorized by the act of August 31, 1954, supra, for the irrigation of not to exceed 21,000 irrigable acres of the Michaud Division of the Fort Hall Indian Reservation.

American Falls and Palisades Storage

4. (a) The water supply to be available under this agreement comprises water accruing to capacity in Palisades Reservoir and in American Falls Reservoir, as more fully defined herein.

(b) Reclamation will operate and maintain the existing American Falls Dam and Reservoir, and will make available to the Indian Bureau stored water accruing to two and eight thousand and fifty-nine ten thousandths per cent (2.8059%) of the active capacity of that reservoir within the limits and on the terms and conditions provided in this agreement. This percentage shall, so long as the reservoir has an active capacity of 1,700,000 acre-feet, be treated as the equivalent of 47,700 acre-feet of active capacity. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

(c) The Indian Bureau shall be entitled to have delivered to it during each irrigation season its proportionate share of all irrigation water stored in American Falls Reservoir during the storage season ending during or immediately preceding that irrigation season. The Indian Bureau shall also be entitled to have held over from one irrigation season to the next for its use in that next season stored water to which it is entitled, but the total amount of stored water which will be held over

for the use of the Indian Bureau during an irrigation season shall not exceed the amount that can be stored in the space made available to the Indian Bureau under (b) of this article.

(d) Within the limits of the authorization therefor, Reclamation is now constructing and will complete and operate and maintain Palisades Dam on the Snake River in the vicinity of Irwin, Idaho, to provide a reservoir of an active capacity of about 1,200,000 acre-feet, and related facilities, substantially in accordance with the plans set forth in House Document No. 720, 81st Congress. When the dam and reservoir are ready for the storage and delivery of water for irrigation purposes, the Secretary shall so announce, including a statement of the active capacity that will be available for irrigation storage. The authorized dam will provide a reservoir with an estimated active storage capacity of 1,200,000 acre-feet and, based on that estimated capacity, the use and benefit of six and nine thousand nine hundred and seventeen ten thousandths per cent (6.9917%) of that capacity is allocated hereby to the Indian Bureau. Beginning with the first full irrigation season after the Secretary has announced that the reservoir is ready for storage and delivery of water for irrigation purposes, Reclamation will make available to the Indian Bureau the stored water accruing to that percentage of the active capacity of that reservoir, within the limits and on terms and conditions provided in this agreement. That percentage shall, so long as the reservoir has an active capacity of 1,200,000 acre-feet, be treated as the equivalent of 83,900 acre-feet of active capacity. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

(e) Beginning with the storage season indicated in (d) of this article, the Indian Bureau shall be entitled to have the following storage rights in Palisades Reservoir:

(1) The right to have stored to its credit during each storage season, six and nine thousand nine hundred and seventeen ten thousandths per cent (6.9917%) of all water stored in Palisades Reservoir during that season under the Palisades storage right.

(2) The Palisades storage right under subdivision (1) is subject to the right of others to have stored to their credit during each storage season and with a priority as indicated in article 6, water to which they are entitled through the curtailment of water diversions as provided in that article.

(3) The right to have held over from one irrigation season to the next stored water to which it is entitled.

The total amount of stored water to the Indian Bureau's credit at any time shall not, however, exceed the total amount of space in the reservoir available to the Indian Bureau under this contract, and the Indian Bureau's storage rights in Palisades Reservoir are hereby made subject to the provisions of (g) of this article.

(f) Stored water available under the rights in Palisades and American Falls Reservoirs created by this agreement shall be available for delivery to the Indian Bureau during any irrigation season within these limitations:

Deliveries if made therefrom shall be limited at any time to the amount which can be delivered by means of the Indian Bureau's proportionate share of the outlet capacity, taking into account the requirement of passing through the reservoir water belonging to prior rights and the physical limitations of the existing outlet works.

(g) Under the provisions of the act of September 30, 1950, the active capacity of Palisades Reservoir will be used jointly for irrigation and flood control storage in accordance with the operating plan set forth in House Document No. 720, 81st Congress, and attached hereto as Exhibit A, as that plan is implemented by rules and regulations issued pursuant to section 7 of the act of December 22, 1944 (58 Stat. 890). All the Indian Bureau's storage rights are subject to the operation of the reservoir in accordance with this subarticle. In the event Palisades Reservoir fails to fill during any storage season by reason of such flood control operations, the amount of shortage so attributable shall be prorated equally over all space allocated to storage of water for irrigation, municipal or other miscellaneous purposes and shall be charged against all stored water including that, if any, carried over from prior irrigation seasons.

Temporary Storage and Exchange of Water; Release of Jackson Lake and Palisades Water for Power Production

5. (a) It is the purpose of Reclamation and the water users having storage rights in the reservoir system (including the Indian Bureau) to have the reservoir system so operated as to effect the greatest practicable conservation of water. In keeping with this purpose, the endeavor will be to hold stored water in reservoir system space that is furthest upstream. Water in storage in any of the reservoirs of the system may, however, when the watermaster and the Advisory Committee determine this to be in the interest of water conservation, be held temporarily in unoccupied space in any other reservoir in the system. And the Indian Bureau hereby consents to the making, with the approval of the watermaster, of annual exchanges of stored water among the various reservoirs of the system.

No such temporary holding of water or such annual exchanges shall, however, deprive any entity of water accruing to space held for its benefit.

(b) During any storage season, Reclamation, after consultation with the Advisory Committee, may release stored water from Palisades Reservoir for the maintenance of power production at Palisades Dam powerplant, and may store such water in American Falls Reservoir. The release of such water will be confined, however, in storage seasons when it appears that American Falls, Palisades, and Jackson Lake Reservoirs will fail to fill to water required for the maintenance of a minimum firm power production (estimated to be about 11,000,000 kilowatt-hours per month at an average production of 15,000 kilowatts) and which can be stored in American Falls Reservoir, and no such release shall be made that will preclude the later delivery of water, by exchange or otherwise, to the upper valley entities entitled thereto.

Winter Power Operation; Minidoka Powerplant

6. (a) Reclamation, in its operation of American Falls and Minidoka Dams during the storage season of each year is required to pass through enough water to satisfy existing diversion rights in the stretch of river down to and including Milner Dam and certain power rights below Milner Dam, and has the privilege under an existing decree to use at Minidoka Dam 2,700 cubic feet per second of water for the development of power. While Reclamation must operate the American Falls and Minidoka Dams so as not to interfere with these third-party rights, it will be the objective of Reclamation in the operation of both its American Falls and Minidoka powerplants to curtail the release of

additional water from American Falls Reservoir for power production at those powerplants during the storage season of any year whenever operation of those powerplants to the full extent of their respective water rights for power production would result in loss of irrigation water otherwise storable in the reservoir system. Accordingly, except as it is determined by the Secretary that additional water may be passed through American Falls and Minidoka Dams without the loss of water that could be stored for irrigation in the reservoir system, Reclamation will, during each storage season beginning October 1, 1952, and continuing so long as the provisions of (c) of this article remain operative, limit the release of water through those dams as follows:

To the amount of water required to provide flows below Minidoka Dam sufficient to meet existing diversion rights in the reach of the river through Milner Dam and the power rights required to be recognized under the provisions of the contract of June 15, 1923, between the United States and the Idaho Power Company (Symbol and No. Ilr-733), as those diversion and power rights may be modified from time to time.

To the extent that it is practicable to do so, the Advisory Committee will be informed in advance of any plans for the release of water in excess of the foregoing limitations; and that Committee will be furnished written reports, as of the close of the storage season of each year, showing, among other things, the releases actually made and the minimum releases required to be made.

(b) Curtailment of releases as provided in (a) of this article will result in there being, in some years, additional water available for storage for irrigation purposes in American Falls, Island Park, and Palisades Reservoirs. In any storage season when these reservoirs fail to fill, the saved water attributable to such curtailment shall be credited, first, to Island Park Reservoir to the extent of 45,000 acre-feet without regard to the priority of the storage permits held for that reservoir, and thereafter to American Falls, Island Park, and Palisades Reservoirs in the order of priority of their respective storage permits, the crediting to Island Park Reservoir and to any storage right in any other reservoir (except the lower valley exchanged space in American Falls Reservoir) being contingent on the owners of these rights obligating themselves for their share of the annual payments for power replacement in keeping with the provisions of (e) of this article.

(c) For the purposes of this agreement and without relinquishment of any part of the power rights herein described, it is assumed that but for curtailment of operation as provided in (a) of this article, units 1 through 6 of the Minidoka powerplant would be operated during the storage season of each year to the maximum extent practicable within the limits of the power rights therefor (2,700 second-feet as decreed by the District Court of the Fourth Judicial District of Idaho on June 20, 1913, in the case of Twin Falls Canal Company v. Charles N. Foster, et al.) and that in consequence of operations under this article there may be losses in the production of power and energy at that plant. To offset such losses, Reclamation will, as nearly concurrently as practicable, make replacement by the delivery of power

and energy into the Minidoka power system at the Minidoka powerplant from other interconnected Federal powerplants being operated under the Federal Reclamation Laws. Payment for such replacement power and energy shall be made by the Indian Bureau and all other contractors having reservoir rights benefiting from the water savings resulting from operations under the provisions of (a) of this article in annual amounts determined as follows:

(1) Prior to the date when either American Falls powerplant or Palisades Dam powerplant is first in service, the payment for any year shall be the product, in dollars, of the then controlling average annual replacement requirement, in kilowatt-hours, times four mills (\$0.004).

(2) Beginning with the date when either the American Falls powerplant or Palisades Dam powerplant is first in service, the payment for any year shall be the product, in dollars, of the then controlling average annual replacement requirement, in kilowatt-hours, times the price per kilowatt-hour, figured at 100 per cent load factor, under the then existing rate schedule for the sale of firm power and energy from the plant or plants involved.

In determining replacement requirements under this article, no account is intended to be taken, by way of offset or otherwise, of the effect of any reservoir system storage operations on the seventh unit of the Minidoka powerplant.

(d) The replacement requirements for the year ending September 30, 1953, shall be 5,699,000 kilowatt-hours, being the average annual

replacement requirement for the period beginning October 1, 1931, and ending September 30, 1951. The average annual replacement requirement under either (1) or (2) of (c) above for the year ending September 30, 1954, shall be the average of the annual replacement requirements for each year of the 20-year period ending September 30, 1953, and for each 12-month period after September 30, 1954, shall be the average of the annual replacement requirements of each year of the 20-year period ending on September 30 of the prior year. In deriving this average there shall be used, as annual net power production losses for each year, the annual figures for the years through September 30, 1951, as shown in Table 1 of the document entitled "Criteria and Methods for Determination of Certain Minidoka Powerplant Production Losses From Restrictions on Use of Water Rights"^{1/}, and for each year thereafter, a net power production loss calculated on the basis of the comparison of (1) the total energy that could have been produced by units 1 through 6 of the Minidoka powerplant based on the water flows actually recorded at the U.S.G.S. Minidoka gaging station (hereinafter called the Minidoka gage), corrected as hereinafter provided, and (2) the energy which theoretically could have been generated at those units with the flows at the Minidoka gage without curtailment in winter power operation as provided in this article and exclusive of irrigation storage releases. Using conclusions reached as to flows and heads, the power loss calculations will be made by utilizing the power production curves shown in drawing No. 17-100-139, as revised, incorporated by reference

^{1/} Duplicate originals of this document shall be filed with the watermaster of District No. 36, the officer of the United States in charge of the Minidoka Project, and the Burley Irrigation District.

in the document identified above, but increases in energy in any year by reason of taking American Falls storage into account as provided in subparagraph (3) of this subarticle (d) shall be accounted for as compensating offset up to but not exceeding energy losses accruing in that year by reason of curtailment in power operations under this article.

To correct flows under (1) above, all storage releases except American Falls shall be excluded and the measure of American Falls storage passing the Minidoka gage shall be the increase in storage at that gage over that computed at the Blackfoot gaging station as shown in the annual report entitled "Water Distribution and Hydrometric Work, District 36, Snake River, Idaho", the latter further corrected for any American Falls storage that may have been present by reason of having been stored temporarily upstream and that portion of Palisades storage which was diverted above the Minidoka gage. In measuring American Falls storage, it shall be assumed that storage is released from downstream reservoirs first. The flow at the Minidoka gage without storage shall be taken to be the normal flow at that gage as shown by that same report. In determining water flows, with and without curtailment of power operations as provided in this article, these assumptions shall be used with respect to units 1 through 6 of the Minidoka powerplant:

(1) There is a right for power production to maintain a flow of 2,700 second-feet at Minidoka Dam during the storage season of each year in accordance with the decree entered June 20, 1913, supra, if that flow, disregarding the storage of saved water in the reservoir system under the provisions of this article, would be available at Minidoka Dam.

(2) There is a right to use, within the hydraulic capacity of these units, whatever natural flow passes Minidoka Dam during each irrigation season.

(3) Although there is no right to have water stored under American Falls Reservoir rights released for power production, during the period that such storage is being released for irrigation there will be more energy produced by these units than is attributable to the natural flow rights therefor, which shall be taken into account as a compensating offset as provided above in this subarticle (d).

To determine controlling power heads, the effective power head for any period shall be derived on the basis of recorded forebay and tailwater elevations for that period.

The foregoing criteria for determinations of annual net power production losses may be changed from time to time but only if the changes are made in writing with the approval of the Secretary, the Advisory Committee, and the boards of directors of both the Burley and Minidoka irrigation districts. Determinations as to net power production losses for each year and the average annual replacement requirement under this article shall be made by a committee of three comprising the State Watermaster of District No. 36, a representative to be selected by the Burley and Minidoka irrigation districts and the North Side Canal Company, Ltd., and the officer of Reclamation in charge of the Minidoka Project, but, should that committee fail to make a determination for any year by January 1 of the year for which the determination is required, it may be made by the Secretary.

(e) The annual payment determined as provided in this article shall be apportioned among the benefiting reservoirs as follows:

- (1) prior to the first full storage season during which Palisades Reservoir is in operation, eighty-eight per cent (88%) to American Falls Reservoir and twelve per cent (12%) to Island Park Reservoir; and
- (2) beginning with the first full storage season of Palisades operation, seventy-eight per cent (78%) to American Falls, twelve per cent (12%) to Island Park, and ten per cent (10%) to Palisades. The amount apportioned to each reservoir shall be accounted for as part of the operation and maintenance costs for which provisions for payment for the Indian Bureau's share is made elsewhere in this agreement. The amount apportioned to American Falls Reservoir shall be distributed equally over all space available for irrigation storage, excluding the lower valley exchanged space but including in lieu thereof the upper valley exchanged space in Jackson Lake Reservoir.

(f) If the owners of any storage rights to benefit from the operation of this article fail to obligate themselves for their share of the annual payments for power replacement hereunder, the saved water creditable to such rights and the power replacement costs chargeable thereto shall be redistributed according to a formula to be agreed on in writing between the Advisory Committee and the Secretary. Such formula shall, however, be as nearly consistent as practicable with the formula that would control but for such redistribution.

Consent to Special Storage Rights, to Permanent Exchange,
and to Priority of Certain Storage Rights

7. (a) The Indian Bureau hereby consents to the granting to holders of storage capacity in Palisades and American Falls Reservoirs, within the limitations of capacity available to them, special storage rights, which shall be prior in time to storage rights held by Reclamation for American Falls Reservoir, on the following conditions and limitations:

(1) To those water users or water users organizations who, directly or indirectly, contract to curtail storage season diversions for not less than one hundred fifty (150) consecutive days out of each storage season, within these maxima as to total special storage rights:

For water users and water users organizations diverting above American Falls Dam--135,000 acre-feet.

For water users and water users organizations diverting between American Falls and Milner Dam--8,000 acre-feet, exclusive of the rights described in (2) of this article.

(2) To the North Side Canal Company, Ltd., and the Twin Falls Canal Company, the right to store during the months of November through March of any storage season water that would otherwise accrue to them within these rights:

The rights of the North Side Canal Company, Ltd., and of the Twin Falls Canal Company, respectively, to divert at Milner Dam for domestic and livestock uses during those months as follows:

North Side Canal Company, Ltd. 126,000 acre-feet

Twin Falls Canal Company 150,000 acre-feet

within this limitation:

If, taking account of all storable water whether stored or not, Palisades and American Falls Reservoirs fail to fill during any storage season, any water diverted during that storage season by the North Side Canal Company, Ltd., in excess of 126,000 acre-feet (but not to exceed the amount of deficiency in fill), and by the Twin Falls Canal Company in excess of 150,000 acre-feet (but not to exceed the amount of deficiency in fill), will be charged as of the end of that storage season against the allotment of American Falls storage to these respective companies.

This limitation in the case of the North Side Canal Company, Ltd., shall become operative from the date Palisades Reservoir is ready for operation, but in the case of the Twin Falls Canal Company, need not be made operative until the first year in which that company exercises the special storage provisions to which consent is here given.

(b) Certain water users organizations owning storage rights in American Falls Reservoir have agreed, or will agree, in connection with the acquisition of additional reservoir rights in Palisades or American Falls Reservoir, to accept in exchange for a portion of their American Falls Reservoir rights certain storage rights in Jackson Lake Reservoir below

elevation 6752 feet above sea level (U.S.G.S. datum), the provisions for such exchange being substantially as set out in the document entitled "Basic Provisions Incorporated or to be Incorporated in Contracts With Water Users Organizations to Govern the Permanent Exchange of Certain American Falls and Jackson Lake Storage Rights", attached hereto as Exhibit B. The rights to be held in American Falls Reservoir as a result of this exchange, comprising nineteen and seventy-five hundredths per cent (19.75%) of the active capacity in that reservoir, are identified collectively as the lower valley exchanged space. The Indian Bureau hereby consents to such exchange.

(c) In connection with Island Park Reservoir, located on the North (Henry) Fork of Snake River, Reclamation holds water license No. R-590, with a priority date of March 14, 1935, and license No. R-686, with a priority date of June 12, 1940. Notwithstanding the later priority of license No. R-686, the Indian Bureau hereby agrees that all storage rights held by Reclamation in connection with Island Park Reservoir may be treated as having the same priority as rights under license No. R-590.

(d) In connection with Idaho permit No. 15134, a direct diversion permit with a priority date of March 30, 1921, held in connection with American Falls Reservoir, Reclamation has contracted with American Falls Reservoir District No. 2 to recognize the right of that district to have water license No. 15134 exercised substantially as follows:

American Falls Reservoir District No. 2 to have the right to divert as natural flow during each irrigation season under water license No. 15134, having a March 30, 1921 priority, as follows: from May 1 of each irrigation season continuing during that season so long as

there is natural flow available for that priority, the first 1,700 cubic feet per second of flow to be available one-half (1/2) to American Falls Reservoir District No. 2 and one-half (1/2) to American Falls Reservoir, except that in any year in which American Falls Reservoir is full to capacity on April 30 or fills after that date, taking into account any water that may be temporarily stored to its credit in upstream reservoirs, all water diverted by American Falls Reservoir District No. 2 within the maximum of 1,700 cubic feet per second during the year prior to the initial storage draft on American Falls Reservoir after the reservoir finally fills in that year shall be considered as natural flow under water license No. 15134. Nothing herein shall prevent American Falls Reservoir District No. 2 from diverting water under said license prior to May 1 of a given irrigation season, but all such diversions shall be charged as storage in the event the reservoir is not full on April 30 of that season or does not fill after April 30 of that season. Water available at American Falls Reservoir for the March 30, 1921 priority under water license No. 15134, other than that to be

available to American Falls Reservoir District
No. 2 as above provided, to be available for
storage in American Falls Reservoir.

And the Indian Bureau will not oppose an adjudication of a natural flow right of the waters of the Snake River for the benefit of American Falls Reservoir District No. 2 consistent with the foregoing criteria as such adjudication may relate only to the lands and water of the Michaud Division of the Fort Hall Indian Reservation. The contract by the United States with American Falls Reservoir District No. 2, having been negotiated on the basis that that district assume its proportionate share of the obligation for the cost of replacement power under the provisions of article 6, after such contract is confirmed, Reclamation shall make application to the State of Idaho for amendment of water permit No. 15134 and the issuance thereunder with a priority date of March 30, 1921, requiring that the remainder of the right under the permit, 6,300 second-feet, to the extent that such right remains outstanding, be used for storage in American Falls Reservoir. Such right, however, if issued to Reclamation, shall not carry voting privileges in water users meetings under the laws of the State of Idaho. Such application shall, however, leave unaffected water license No. R-269, having a priority date of March 30, 1921.

(e) If Reclamation, under the Federal Reclamation Laws, hereafter constructs storage facilities on the Snake River or its tributaries above Milner Dam in addition to those now constructed or authorized to be constructed to provide water for irrigation purposes, the Indian Bureau recognizes that, notwithstanding the establishment of a storage right for such additional facilities with a priority subsequent to that assigned to

Palisades Dam and Reservoir, Reclamation may hereafter contract with water users organizations which then have storage rights in Palisades Reservoir, to operate not to exceed 300,000 acre-feet of such capacity for the storage of water for irrigation for the benefit of such organizations as though that capacity had a storage right of identical priority with that held for Palisades Dam and Reservoir.

Delivery of Water; Measurement and Losses; Return Flow

8. (a) To the extent that water is pumped from wells and from surface streams that flow into American Falls Reservoir, actual measurements at the well heads and at the discharge lines of other pumping plants delivering water for the said Michaud Division shall be made during each irrigation season. All water provided through the Michaud Division system for the irrigation of lands of the Michaud Division of the Fort Hall Indian Reservation from any and all sources in any irrigation season shall be accounted for as water stored for the Indian Bureau as provided in article 4 and charged thereto, except:

- (1) Surface waters that may be available under flood water rights that may be obtained with a priority of not earlier than one year before the priority held for Palisades Reservoir; and

(2) Not to exceed an average annual amount of 22,400 acre-feet, as prescribed by Section 3(b)(1) of said act of August 31, 1954 (Supra) calculated over a ten-year period including the irrigation season just ended and the preceding nine irrigation seasons, from ground water pumped any place in the Michaud Division system. Until a full ten-year period is available, the average shall be for the years of project operation.

Delivery of water to lands of the said Michaud Division that as above provided in this article is chargeable to stored water for any irrigation season, shall be limited, however, to the quantities of stored water available as provided in article 4, and the supply of water available from all sources through the Michaud Division system shall be limited to the irrigation of not to exceed 21,000 acres of land. Lands within the outer boundaries of the Michaud Division, but which do not share in the water supply provided by this agreement, are hereby excluded from any of the benefits of this agreement, of the act of August 31, 1954, and of the Michaud Division system.

(b) The water chargeable to Indian Bureau stored water as provided in this article shall be determined from day to day during the irrigation season of each year. Corresponding credits from day to day shall be given by the watermaster to the water rights, whether natural flow or storage rights, that have been infringed on by pumping for the Michaud Division. The amounts represented by such infringements, to whomsoever they shall accrue, shall be made up out of stored water available to the Indian Bureau under this agreement, from day to day, if necessary. The determination of the charges and the credits hereunder shall be under a formula to be devised by the watermaster, after consultation with the Advisory Committee, taking into account as one factor the so-called Newell formula with respect to the inflow into American Falls Reservoir, as this formula is affected, in the judgment of the watermaster,

by operation of this contract and by other factors that affect the formula. Departures from that formula shall be called to the attention of the Advisory Committee from time to time.

(c) In addition to other specific provisions as to the distribution of losses chargeable to stored water, there shall be charged against stored water held under this agreement to the credit of the Indian Bureau at the end of any irrigation season one and one-half per cent ($1\frac{1}{2}\%$) to offset evaporation losses. Such charge shall be made as of not later than the end of the ensuing storage season.

(d) The Indian Bureau shall make no claim on behalf of the United States or of any individual, community or band of Indians of any surface return flows from the Michaud Division after they enter American Falls Reservoir, except as they are recaptured before leaving the Division, and are used directly on the land of that Division. Nor shall any such claim be made for underground flows except to the extent covered by paragraph (a) of this article. Return flows hereby relinquished, whether surface or underground, shall be credited either to the river or to the reservoir in accordance with the relative priorities heretofore or hereafter established under the laws of the State of Idaho.

Ordering of Water

9. Under the plan of development adopted by the Indian Bureau, there will normally be no direct delivery from the Snake River of either natural flow or stored water. Therefore, the provisions of article 8 will govern as to the rights to water, whether charges therefor shall be against natural flow or stored water, matters of replacement of waters from storage, and related problems. If, on occasion, however, there is need for direct delivery of stored water to the Indian Bureau, this shall be effected by the Indian Bureau notification to the watermaster,

a reasonable period in advance, of the amount of water within its entitlements as stated in this agreement to be delivered for lands of the Michaud Division.

Complaints Regarding Water Supply

10. Reclamation and its officers, agents and employees in charge of American Falls and Palisades Reservoirs and the watermaster will use their best efforts and best judgment to deliver to the Indian Bureau its proportionate share of the water to which it is entitled under this agreement. Should the Indian Bureau feel aggrieved because of an alleged mistake or inaccuracy in the delivery of water or in the division of stored water among the parties entitled to such water from the reservoirs, the Indian Bureau shall immediately report such alleged mistake or inaccuracy to the watermaster and to the official of Reclamation in charge of the reservoir. If the watermaster finds that the Indian Bureau's proportionate share of stored water is not being delivered, he will correct the error as early as possible.

Indian Bureau's Storage Cost Obligation

11. (a) The water supply costs associated with the storage space provided in this agreement for the Indian Bureau is two hundred eleven thousand, three hundred nine and seventy-nine one-hundredths dollars (\$211,309.79) for American Falls Reservoir and a maximum of seven hundred fifty-five thousand one hundred dollars (\$755,100.00) for Palisades Reservoir, being a total maximum obligation of nine hundred sixty-six thousand four hundred nine and seventy-nine one-hundredths dollars (\$966,409.79).

(b) The water supply costs for Palisades Reservoir included in the obligation above stated are based upon the sum of seven hundred fifty-five thousand one hundred dollars (\$755,100.00), this being determined at the rate of nine dollars (\$9.00) per acre-foot of capacity and on the assumption that the reimbursable construction costs of the Palisades Project finally allocated to joint facilities equal or exceed the sum of twenty-three million two hundred one thousand one hundred dollars (\$23,201,100). If the reimbursable joint facility construction costs, as finally determined, are less than twenty-three million two hundred one thousand one hundred dollars (\$23,201,100.00), and as a result, the amount of joint facility costs allocated to irrigation are less than the amount expected so to be allocated according to the Secretary's report of July 1, 1949,^{1/} the amount of the reduction shall be proportioned between irrigation construction costs assigned to be repaid by the water users and those assigned for repayment from power revenues on the basis of the amounts of estimated irrigation construction costs so assigned in the Secretary's report of July 1, 1949. The amount of reduction, if any, when determined by the Secretary, shall be distributed equally as a credit against the construction charge obligation of all space the costs of which are allocated to irrigation. The total amount of credit and the portion thereof to which the Indian Bureau is entitled shall be announced in writing by the Secretary promptly after final construction costs are determined and the allocations

^{1/} Of the estimated joint facility construction costs, \$21,724,400 were allocated to irrigation under the report approved and adopted by the Secretary on July 1, 1949 (H. Doc. No. 720, 81st Congress).

thereof are made. In no event, however, shall the credit be such as to reduce the Indian Bureau's construction charge obligation on account of Palisades space to less than six hundred fifty thousand two hundred twenty-five dollars (\$650,225.00), this being at the rate of seven dollars and seventy-five cents (\$7.75) per acre-foot of capacity as stated in this agreement.

(c) Upon execution and approval of this Memorandum of Agreement by the Secretary of the Interior, the Bureau of Reclamation shall transfer to the accounts of the Indian Bureau on a nonappropriation cost transfer voucher the amount of \$861,534.79 on account of its storage cost obligation which includes the minimum amount of \$650,225.00 on account of Palisades Reservoir space. In the event that there is a determination in accordance with the provisions of paragraph (b) of this article that the cost of such space in Palisades Reservoir exceeds this minimum amount, Reclamation shall notify the Indian Bureau of this determination and thereafter the Bureau of Reclamation shall transfer to the Indian Bureau on a nonappropriation cost transfer voucher such additional costs. The Indian Bureau further agrees that the cost apportioned to it on account of its storage cost obligation for American Falls and Palisades Reservoirs shall be considered to be a part of the appropriation limitation of \$5,500,000 as provided for in Section 7 of Public Law 741, 83rd Congress, approved August 31, 1954.

Reserved Works; Care, Operation and Maintenance Thereof

12. (a) The Indian Bureau, during the period of operation and maintenance of the reserved works by Reclamation, shall pay to Reclamation the share of costs of operation and maintenance thereof, including whatever costs may be incurred in the delivery of water therefrom, which is apportionable to the irrigation storage rights therein and which is allocable to the Indian Bureau's rights defined in article 4. In determining the total costs apportionable annually to the irrigation storage rights in these works there shall be included payments required to be made

in accordance with the provisions of article 6, but there shall be excluded whatever amounts are required to be paid as American Falls operation and maintenance charges under the contract of June 15, 1923, between the Idaho Power Company and the United States, as it may hereafter be amended.

(b) With respect to the determination under (a) of this article of the costs for Palisades Dam and Reservoir, there shall be determined from time to time by the Secretary, after consultation with the Advisory Committee, the basis for distributing among the various purposes which by law are to be served by the dam and reservoir the costs of operation and maintenance thereof and the basis for assigning those costs for repayment. In determining the such total costs annually apportioned to the irrigation storage rights there shall be deducted from the total annual cost of operation and maintenance of the dam and reservoir, those costs which are determined to be property chargeable to other purposes served by the reservoir and for which other provision for repayment, in whole or in part, is made pursuant to law. The costs apportionable to the irrigation storage rights in Palisades Dam and Reservoir shall be distributed annually to all storage space that is made available for irrigation purposes.

(c) Payment of the Indian Bureau's share of operation and maintenance costs of the reserved works shall be made for each calendar year on the basis of annual estimates by Reclamation. The notice of these annual estimates, hereinafter referred to as the operation and maintenance charge notice, shall contain a statement of the estimated cost of operation and maintenance of the works to be incurred for the calendar year

involved, the amount thereof apportionable to the irrigation storage rights therein, and the amount of the Indian Bureau's share of these estimated costs. The operation and maintenance charge notice shall be furnished to the Indian Bureau on or before February 1 of the calendar year for which the notice is issued, but a preliminary estimate shall be given by June 1 of the preceding year. The Indian Bureau shall transfer to Reclamation the amount stated in the notice on or before April 1 of the year for which it is issued or such other date as may be agreed on.

(d) Whenever in the opinion of Reclamation funds so advanced will be inadequate to operate and maintain the reserved works, a supplemental operation and maintenance charge notice may be given, stating therein the amount of the Indian Bureau's share of the additional funds required, and the Indian Bureau shall advance that additional amount on or before the date specified in the supplemental notice. If funds advanced by the Indian Bureau under this article exceed its share of the actual cost of operation and maintenance of the works for the year for which advanced, the surplus shall be credited on the operation and maintenance charges to become due for succeeding years.

Payment of Costs in Delivery and
Distribution of Stored Water

13. (a) The Indian Bureau shall pay, in addition to its proportionate share of the cost of operation and maintenance of American Falls Reservoir and Palisades Reservoir as provided under the preceding article of this agreement, its proportionate share of all costs of the delivery and distribution of water beyond the outlet works of the delivering reservoirs. These costs shall include, with respect to costs incurred

by Reclamation, all costs and expenses of whatsoever nature or kind in connection with, growing out of, or resulting from the distribution of stored water, the protection of stored water between the reservoir and the points of diversion from the river including the prevention of diversion of such water by parties not entitled thereto. Whatever costs of this character are incurred by Reclamation shall be distributed among the Indian Bureau and all others on whose behalf such costs have been incurred on the basis that the operation and maintenance costs of the reservoir are distributed among the various rights. Unless otherwise agreed in writing by Reclamation and the Indian Bureau, such costs shall be paid annually and for billing purposes shall be included as part of the operation and maintenance costs under the preceding article 12 of this agreement.

(b) The Indian Bureau shall also pay its proportionate share of the costs incurred by the watermaster in the delivery and distribution of water in accordance with the provisions of article 9 to the extent that those represent costs incurred other than by the activities of Reclamation in the delivery and distribution of water. The costs will be apportioned and paid in accordance with the provisions of the laws of the State of Idaho.

Advisory Committee

14. (a) In its operation and maintenance of the various Federal dams and reservoirs on the Snake River, the United States has contracted with the various water users organizations having a storage capacity in that system to consult from time to time with the Advisory Committee on

the various matters as will have a substantial bearing on the determination of the amount of stored water to be available in the various reservoirs and on the costs of operation and maintenance of those reservoirs which are required to be borne by the space allocated to irrigation storage. The consultation shall include such matters as under this agreement specifically require consultation with that Committee. The representative of Reclamation will meet with the Advisory Committee from time to time, but not less often than two times each year at such dates and places as may be fixed by the Advisory Committee.

(b) Informal memoranda concerning working arrangements for the carrying out of the provisions of this article may be entered into from time to time between the Regional Director, Region 1, Bureau of Reclamation, or other designated representative of the Secretary and the Advisory Committee.

(c) Beginning January 1, 1953, the Advisory Committee is agreed to be the Committee of Nine, as that committee may be constituted from time to time. The Committee of Nine shall continue to function as the Advisory Committee under this agreement until a different representative body has been designated by a vote of the majority of the water users voting at any regular annual meeting of the water users of District No. 36 held as provided by law. Further designations of bodies to serve as the Advisory Committee may be made from time to time by this same election process.

Statutory Limitations on Water Supply

15. (a) In accordance with the act of August 31, 1954 (68 Stat. 1026), this agreement (except for the flood water rights referred to in article 8) with respect to the water supply for the irrigation of the lands of the Michaud Division of the Fort Hall Indian Reservation,

(1) hereby limits that supply to (i) the yield of the space in Palisades and American Falls Reservoirs, as set out in this agreement, and (ii) to the supply obtained by the pumping of ground water of not more than 22,400 acre-feet as an average calculated at the end of an irrigation season including the irrigation season just ended and the preceding irrigation seasons up to a maximum of nine; and

(2) hereby provides the consent to a priority in time and right in such beneficial consumptive uses of the waters of the Snake River, and its tributaries, as are established under the laws of the State of Idaho, prior to August 31, 1954, as against any use of the water arising on or flowing through the Fort Hall Bottoms within the Fort Hall Indian Reservation, including, but not limited to, the intercepted flow of Ross Fork Creek, the Portneuf River below Pocatello, Big Jimmy Creek, Big Spring Creek, and Clear Creek.

And the United States, with the construction, operation and maintenance of said works of the Michaud Division of the Fort Hall Indian Reservation, hereby waives any of its rights, exclusive of the rights provided in this

agreement, to the use of the waters arising on or flowing through the Fort Hall Bottoms, including, but not limited to, the intercepted flow of Ross Fork Creek, the Portneuf River below Pocatello, Big Jimmy Creek, Big Spring Creek and Clear Creek, for the irrigation of the lands of said Michaud Division. Except as provided herein, nothing in this agreement shall affect any rights in and to the waters of the Fort Hall Indian Reservation or the Snake River and its tributaries.

(b) The limitations imposed in the statute and in (a) of this article 15, are made for the benefit both of Reclamation and water users' organizations contracting with Reclamation for storage capacity in the reservoir system, and for water users having natural flow rights below the points of diversion for the Michaud Division by the Indian Bureau. No modification in these limitations, or in other provisions of this agreement intended to effect the purposes of Section 3 of the Act of August 31, 1954, shall be made without the contractual approval of all the water users and water users' organizations for the benefit of whom these limitations are imposed.

Additional Agreements

16. It is recognized that from the power and energy to be generated at the Palisades powerplant, a supply will be provided for the operation of the pumping plant of the Michaud Division of the Fort Hall Indian Reservation and that revenues from the sale of surplus energy will be made available for a portion of the return of that project's cost. These matters are to be the subject of a separate agreement.

Powerplant Operations

17. Notwithstanding provisions to the contrary in this agreement, the Indian Bureau recognizes that:

(1) The United States, in its operation of the American Falls Dam powerplant will be governed by the provisions of the contract of June 15, 1923 with the Idaho Power Company, as that may be amended, and as further limited by the provisions of article 6.

(2) The United States, in its operation of the Palisades Dam powerplant, will be governed by the provisions of article 4 and these criteria, among others: that the plant shall be operated so as to hold to a practicable minimum the loss of water that would otherwise be available for storage in the reservoir system for irrigation purposes; and that, until such time as a reregulating reservoir has been put into operation, wide fluctuations in the release of water to meet peak power loads will, during irrigation seasons, be confined to periods when this can be done without substantial variation from the flows that would otherwise be present in the river below the dam.

(3) The operation of the Palisades Dam powerplant, during a five-year period (but not beyond the end of the national defense emergency as declared by Proclamation of the President, No. 2914 dated December 16, 1950, 3 CFR 1950 Supp., p. 71), beginning with the date when the first unit of that plant is first placed in service, may be in the following manner:

In addition to normal operation at other times within the limits provided by this agreement, the plant may be operated to produce an average of

60,000 kilowatts (217,440,000 kilowatt-hours) during the period October through February of each storage season when the flow of the river at the dam is equal to or greater than for those months of the median year during the period 1928 through 1947 whenever such operation is required in the judgment of the Defense Electric Power Administrator, or his successors in functions, to help meet certified defense loads served from power systems with which the plant is interconnected, directly or indirectly.

Miscellaneous Revenues

18. (a) Having regard for the allocations of investment and repayment responsibilities, miscellaneous revenues realized in connection with the operation and maintenance of Palisades Dam and Reservoir and related costs shall be distributed annually as follows:

Twenty per cent (20%) to be distributed among the Indian Bureau and other parties having storage rights in the reservoir on the same basis that operation and maintenance costs are distributed.

Eighty per cent (80%) to remain the property of the United States.

(b) Miscellaneous revenues realized in connection with the operation and maintenance of the reserved works and related costs, except those in (a) of this article, shall be distributed among the irrigation

storage rights on the same basis that operation and maintenance costs are distributed, such distribution to be effected annually in connection with the final annual adjustments of operation and maintenance costs.

Limitation of Area of Lands in non-Indian
Ownership for Which Water is Furnished

19. As prescribed by the Federal Reclamation Laws, water made available hereunder shall not be delivered to non-Indian lands of more than one-hundred-sixty (160) irrigable acres in the beneficial ownership of any one person or other entity, or more than three-hundred-twenty (320) irrigable acres in beneficial ownership of a husband and wife as tenants in common or as community property, except that delivery may be made to lands held in excess of this limitation in accordance with the provisions of section 46 of the Act of May 25, 1926 (44 Stat. 649), as amended by the Act of July 11, 1956 (70 Stat. 524).

Contingent on Appropriations or Allotment of Funds

20. The expenditure of any money or the performance of any work by the agencies who are parties hereto are contingent on funds required therefor having been made available by the Congress.

Effective Date and Term of Agreement

21. This agreement will become effective on the date of its approval by the Secretary of the Interior and will remain in force until terminated by the Secretary of the Interior. It is anticipated that the first year of water delivery on the Michaud Division of the Fort Hall Indian Reservation will be calendar year 1960. Interim use of the storage capacity described

in this agreement may be made under the Reclamation Laws until that time or any extension of such date. The Indian Bureau is to notify Reclamation not later than January 1, 1960, of any change which will extend the time when water is to be first delivered. The payments required under articles 11, 12 and 13 of this agreement will not commence until the year in which water is delivered.

Right of Appeal from Action Taken Pursuant
to The Terms of This Agreement

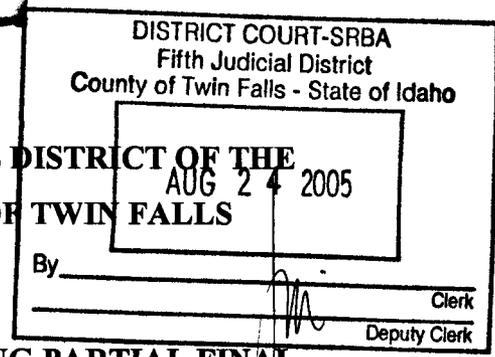
22. In carrying out this Memorandum of Agreement should an action be taken by one party which the other party disputes an opportunity shall be afforded to such party to protest such action, and in the event proper adjustment of the difference between the parties cannot be reached, the objecting party shall have the right to appeal in writing to the Secretary of the Interior. A copy of any such appeal shall be furnished to the other party, who will likewise have the right to present his views in writing to the Secretary of the Interior for decision. The decision of the Secretary in any such appeals shall be final and binding on all the parties.

E. G. Nielsen
Assistant Commissioner, Bureau of Reclamation

W. Barton Greenwood
Deputy Commissioner, Bureau of Indian Affairs

Approved: April 25, 1957

Fred G. Aandahl
Asst. Secretary of the Interior



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

) ORDER AMENDING PARTIAL FINAL
) CONSENT DECREE DETERMINING
) THE RIGHTS OF THE SHOSHONE-
) BANNOCK TRIBES TO THE USE OF
) WATER IN THE UPPER SNAKE RIVER
) BASIN TO CORRECT CLERICAL
) ERROR, I.R.C.P 60(a).
) For water right: 92-22

I. FINDINGS OF FACT

A Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin was issued by the SRBA District Court August 2, 1995. The Consent Decree related to an agreement between the Shoshone-Bannock Tribes, the State of Idaho, the United States, and various Idaho water users entitled The 1990 Fort Hall Indian Water Rights Agreement. The Consent Decree is now consolidated in Subcase 92-22.

A Motion to Correct Clerical Errors Pursuant to Rule 60(a) was filed by the Shoshone-Bannock Tribes (the Tribes) on March 25, 2005. Service was made on all the parties who were signatories to the Consent Decree. An Order of Reference was made to Special Master Brigette Bilyeu. The Motion stated that a clerical error had been made in the transcription of the Consent Decree; specifically, that the Consent Decree had omitted parts of prior decrees that were to be the basis of the Consent Decree.

A hearing on the Motion was held before the Special Master on May 25, 2005. The Tribes, the United States, and the State of Idaho appeared at the hearing. There were no objections to the Motion. The Motion was granted at the hearing, and an Order Granting Motion to Correct Clerical Errors Pursuant to Rule 60(a) was issued May 26, 2005. On June 6, 2005, the Special Master issued a Special Master's Report

and Recommendation, recommending that the *Consent Decree* be amended and decreed. No motions to alter or amend were filed, and the time for challenges has no expired.

Based on the record and the *Special Master's Report and Recommendation*, it appears that a clerical error did occur in the transcription of the *Consent Decree*. Certain elements of rights were omitted, although those water rights were referred to in the *Partial Final Consent Decree*, were referred to in the agreement that resolved the Shoshone-Bannock Tribes water rights (*The 1990 Fort Hall Indian Water Rights Agreement*) and were also referred to in a prior decree relating to tribal rights, *United States v. Hibner*. Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED, that the *Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin* is hereby amended and decreed as set forth in the attached *Appendix Containing Amendments to Consent Decree*.

Dated: August 22, 2005.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

Partial Final Consent Decree Determining Rights of the
Shoshone-Bannock Tribes to the Use of Water in the
Upper Snake River Basin (August 2, 1995), Subcase No. 92-22

Appendix Containing Amendments to Consent Decree

Consent Decree pages 27- 28:

Right No. 29-00231

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 259.3 AFY
- .iii Diversion Rate: 1.59 CFS
- .iv Annual Volume of Consumptive Use: 154.3 AFY
- .v Priority Date: July 6, 1868
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
Irrigation 1/1 – 12/31
- .viii Place of Use: Allotment 61 (NESW, SENW, Sec 35 Twp 6S
Rge 38E) for 79.53 acres.
- .ix Basis of Right: The Winters Doctrine per the Memorandum
Decision in United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928)
and the Decree of the United States District Court, Eastern Division,
dated April 8, 1929.

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 24 2005	
By _____	Clerk
_____	Deputy Clerk

Right No. 29-00238

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 282.5 AFY

- .iii Diversion Rate: 1.733 CFS
- .iv Annual Volume of Consumptive Use: 168.14 AFY
- .v Priority Date: July 6, 1868
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 71 (SENW, SWNE, Sec 36 TWP 6S
Rge 38E) for 86.67 acres.
- .ix Basis of Right: The Winters Doctrine per the Memorandum
Decision in United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928)
and the Decree of the United States District Court, Eastern Division,
dated April 8, 1929.

Right No. 29-00239

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 273.7 AFY
- .iii Diversion Rate: 1.679 CFS
- .iv Annual Volume of Consumption: 162.9
- .v Priority Date: July 6, 1868
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use: Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 72 (NESW, NWSE, Sec 36 Twp 6S Rge 38E)
for 83.97 acres.

- .ix. Basis of Right: The Winters Doctrine per the Memorandum Decision in United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928) and the Decree of the United States District Court, Eastern Division, dated April 8, 1929.
- .x Matters necessary for definition, clarification or administration of the right: A corresponding reduction will be made to Right No. 29-12049.

Consent Decree page 25:

Right No. 29-12049

- .i Source: Bannock Creek
- .ii Annual Diversion Volume: 18,559.3 AFY
- .iii Diversion Rate: 98.87 CFS
- .iv Annual Volume of Consumptive Use: 11,042.10 AFY
- .v Priority Date: June 14, 1867
- .vi Existing Points of Diversion:
 - NENWSE Sec 32 Twp 7S Rge 33 E BM
 - SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM
 - NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM
 - NESWSE Sec 6 Twp 7S Rge 33E BM
 - (3 – 20 HP pumps for Michaud Project)
 - Future Points of Diversion may be developed within the Bannock Creek basin to utilize this water right within the Bannock Creek drainage basin.
- .vii Purpose and Period of Use: 3/15 – 11/15

- .viii Place of Use: 4,708 present and future acres within the Reservation.
- .ix Basis of Right: Winters Doctrine
- .x Matter Necessary for Definition, Clarification or Administration of the Right:
 - .a The Tribes and the United States shall exercise this right in a manner that ensures person with water rights decreed in the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)] and that are confirmed in the SRBA continue to receive their full legal entitlement. This right is reduced to transfer water to Right No. 29-00239.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER AMENDING PARTIAL FINAL CONSENT DECREE DETERMINING THE RIGHTS OF THE SHOSHONE-TRIBES was mailed on August 24, 2005, with sufficient first-class postage to the following:

1990 FORT HALL INDIAN WATER

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WEISER IRRIGATION DISTRICT

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Phone: 208-549-0390

DON MCFARLAND
SUNDANCE INC

Represented by:
J WALTER SINCLAIR
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TWIN FALLS, ID 83303-0366
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FORT HALL WATER USERS
KIM G BODILY

Represented by:
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SHOSHONE-BANNOCK TRIBES

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STATE OF IDAHO

Represented by:
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TWIN FALLS CANAL COMPANY

Represented by:
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Phone: 208-733-0700

ALLEN NOBLE FARMS INC

ALLEN T NOBLE
C&T RANCHES
CHARLES STEINER
CLEAR LAKES TROUT CO INC
COTTONWOOD CANAL CO
FARM DEVELOPMENT CORP
G PATRICK NORRIS
GIRNDSTONE BUTTE MUTUAL CANAL
JEFF BLANKSMA
NAMPA & MERIDIAN IRRIGATION
RAINBOW TROUT FARMS
RIM VIEW TROUT CO
SAILOR CREEK WATER COMPANY
WEST END PROJECT

AMALGAMATED SUGAR COMPANY

BASIC AMERICAN FOODS
CITY OF POCATELLO
J R SIMPLOT COMPANY
LAMB-WESTON
ORE-IDA
UNIVERSAL FROZEN FOODS COMPANY
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Phone: 208-342-4591

(Certificate of mailing continued)

U.S.A.

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
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BOISE, ID 83724

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

**THE 1990 FORT HALL INDIAN
WATER RIGHTS AGREEMENT**

* * *

By and Between

**THE SHOSHONE-BANNOCK TRIBES
OF THE FORT HALL INDIAN RESERVATION,
THE STATE OF IDAHO, THE UNITED STATES,
and CERTAIN IDAHO WATER USERS**

THE 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT

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**THE 1990
FORT HALL INDIAN
WATER RIGHTS AGREEMENT**

ARTICLES OF AGREEMENT BY AND BETWEEN THE SHOSHONE-BANNOCK TRIBES OF THE FORT HALL INDIAN RESERVATION, THE STATE OF IDAHO, THE UNITED STATES, AND CERTAIN IDAHO WATER USERS.

In settlement of litigation involving claims made by the United States on behalf of the Shoshone-Bannock Tribes to water rights in the Upper Snake River Basin and its tributaries, the parties agree as follows:

ARTICLE 1. TITLE

These Articles of Agreement collectively comprise, and may be cited as, "The 1990 Fort Hall Indian Water Rights Agreement" or the "Agreement."

ARTICLE 2. PURPOSE

All parties to this Agreement seek to secure, and pledge their honor to maintain, peaceful settlements of conflicts over water among the parties in the Snake River Basin in Idaho.

ARTICLE 3. PREAMBLE

- 3.1 The State of Idaho, pursuant to Idaho Code § 42-1406A (Supp. 1989) has commenced in the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls a general adjudication of the rights to the use of the water from that portion of the Snake River Basin located within the State of Idaho.
- 3.2 H. Con. Res. 16, 48th Idaho Leg., 1st Sess. (1985) directed the State to engage in good faith, government-to-government

negotiations with the Shoshone-Bannock Tribes to settle the nature and extent of the Tribes' water rights reserved under the Winters Doctrine within the Snake River Basin in Idaho to avoid litigation.

- 3.3 The Tribes have a long-standing tradition of favoring negotiation as a means of resolving conflicts. Cong. Globe, 40th Cong., 3d Sess., p. 803, col. 1 (February 2, 1869).
- 3.4 The policy of the Congress and the federal Executive Branch is to facilitate negotiations among Indian tribes, states, private water users and federal agencies to avoid litigation. 55 Fed. Reg. 9223 (March 12, 1990).
- 3.5 Executive Order Nos. 85-9 and 87-9 provide that it is in the interest of the State of Idaho to settle through negotiated agreements, if possible, all claims for water rights reserved under federal law. These executive orders further instructed the Idaho Water Resource Board to represent the State and to provide for the effective involvement of interested Idaho water users and other members of the public in the negotiations.
- 3.6 The Fort Hall Business Council requested, by resolution dated July 17, 1985, that the United States, consistent with federal trust responsibilities to the Tribes, assist and participate in the negotiations leading to this Agreement.
- 3.7 The Tribes and the State agreed in a Memorandum of Understanding dated August 30, 1985, to commence good

faith, government-to-government negotiations as early as October 15, 1985. On January 10, 1986, the Tribes, the State and the United States agreed to extend that August 30, 1985 Memorandum of Understanding. The parties subsequently entered into a Technical Studies Agreement establishing a methodology to review the Tribes' reserved water rights claims and to identify matters for further discussion and analysis.

3.8 On October 31, 1985, the Idaho Water Resource Board appointed an Ad Hoc Committee to recommend how best to provide for the effective involvement of interested Idaho water users and other members of the public in the negotiations. That committee submitted its recommendation for review by the Idaho Water Resource Board on December 6, 1985 and for action by negotiators on December 10, 1985. Based upon the recommendation of the committee, the Board designated the Committee of Nine as a party to the negotiations to represent the Idaho water users' interests and established a notice procedure to notify the general public of negotiation meetings. On December 10, 1985 the United States, the Tribes and the State agreed to the Board's proposal providing for open meetings and public participation in the negotiations.

3.9 On May 19, 1987, the Tribes, the State, and the United States, joined by a committee of private water users, executed a Second Memorandum of Understanding, which provided for the continuation of the negotiations.

3.10 This Agreement is the culmination of negotiations undertaken by the parties since 1985.

ARTICLE 4. DEFINITIONS

The following definitions apply for the purposes of this Agreement:

4.1 "Acre foot" or "AF" means the amount of water necessary to cover one acre of land to a depth of one foot and is equivalent to 43,560 cubic feet or 325,851 gallons of water.

4.2 "Acre feet per year" or "AFY" means the number of acre feet of water used from January 1 to December 31.

4.3 "Allotted lands" means lands within or without the exterior boundaries of the Fort Hall Indian Reservation, which were allotted to individual Indians in accordance with applicable Tribal/federal agreement and federal statutes, and which are presently owned by Indians in restricted fee or trust status, and which are located in the counties of Bannock, Bingham, Caribou, and Power. The applicable Tribal/federal agreement and statutes include:

.1 the Agreement of May 14, 1880, ratified by Act of February 23, 1889, ch. 203, 25 Stat. 687; and

.2 the Act of March 3, 1911, ch. 210, 36 Stat. 1058, 1063.

4.4 "American Falls Reservoir" means a water storage facility of the federal Minidoka Project authorized by the Secretary of the Interior under the Reclamation Act of 1902, 32 Stat. 388-390 (April 23, 1904); examined and reported upon by a

Board of Army Engineers and approved by the President on January 5, 1911, in accordance with the Act of June 25, 1910, 36 Stat. 835-836; and initially constructed in 1927 and subsequently replaced under the authority of the Act of December 28, 1973, Pub. L. 93-206, 87 Stat. 904-905.

- 4.5 "Annual diversion volume" means the maximum volume of water in AFY that can be diverted or stored by the holder of a water right.
- 4.6 "Annual volume of consumptive use" means the maximum volume of water in AFY that can be consumptively used by the holder of a water right.
- 4.7 "Basis of right" refers to the legal authority pursuant to which the water right is established or the document by which the right is evidenced.
- 4.8 "Beneficial use" means any use of water for DCMI, irrigation, hydropower generation, recreation, stockwatering, fish propagation and instream flow uses as well as any other uses that provide a benefit to the user of the water.
- 4.9 "Blackfoot Reservoir" means a water storage facility of the Federal Blackfoot Project authorized by the Act of March 1, 1907, ch. 2285, 34 Stat. 1015, 1024; the Act of April 30, 1908, ch. 153, 35 Stat. 70, 78; Act of April 14, 1910, ch. 140, 36 Stat. 269, 274; and the Act of May 24, 1922, ch. 199, 42 Stat. 552, 568.
- 4.10 "Ceded lands" means those lands within the Reservation as originally established under the Second Treaty of Fort

Bridger of July 3, 1868, 15 Stat. 673 and companion executive orders of June 14, 1867, 1 C. Kappler 835-837 (1904), and July 30, 1869, 1 C. Kappler 838-839 (1904) and as fixed by the federal survey of 1873 that were ceded by the Tribes to the United States pursuant to the following Tribal/federal agreements:

- .1 Agreement of May 14, 1880, ratified by the Act of February 23, 1889, ch. 203, 25 Stat. 687;
- .2 Agreement of July 18, 1881, ratified by the Act of July 3, 1882, ch. 268, 22 Stat. 148;
- .3 Agreement of May 27, 1887, ratified by the Act of September 1, 1888, ch. 936, 25 Stat. 452; and
- .4 Agreement of February 5, 1898, ratified by the Act of June 6, 1900, ch. 813, 31 Stat. 692.

4.11 "Committee of Nine" or "Committee of Nine of Water District 01" means the advisory committee of Water District 01.

4.12 "Consumptive use" means the amount of water that does not remain in the water system after use or is not returned to the water system through return flows or seepage, whether or not treatment for purpose of maintaining water quality is required before the water may be returned to the water system, but does not include water lost through evaporation from storage.

4.13 "Cubic feet per second" or "CFS" means a rate of water discharge equivalent to approximately 448.63 gallons per minute.

4.14 "DCMI" means domestic, commercial, municipal and industrial uses excluding hydroelectric generation. Domestic use means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities, stockwatering, and for the irrigation of a family lawn, garden or orchard not exceeding one-half acre of area per household. Industrial and commercial use means the use of water for any purpose that benefits an industrial or commercial enterprise. Industrial and commercial use of water include, but are not limited to, agricultural spraying, irrigation of plants in greenhouses, industrial cooling, mining, energy production, commercial recreation, and losses associated with any industrial or commercial operation. Municipal use means the delivery and use of water through an investor-owned, mutually-owned, tribally-owned or publicly-owned water utility or delivery system for all uses usual and ordinary to such systems. Such use includes but is not limited to uses of water for domestic, irrigation of lawns and gardens, commercial, industrial, fire protection, irrigation and other uses in park and recreation facilities, and street washing.

4.15 "Director" means the Director of the Idaho Department of Water Resources or any successor.

4.16 "Diversion" means the removal of water from its natural course or location by means of a ditch, canal, flume,

bypass, pipeline, conduit, well, pump, or other act of man, or the impoundment of water in a reservoir for rediversion.

4.17 "Diversion rate" means the maximum rate in CFS at which water may be diverted at a point of diversion.

4.18 "Fee lands" means lands within the exterior boundaries of the Reservation held in fee with all federal restrictions on alienation removed.

4.19 "Fort Hall Indian Reservation" or "Reservation" means those lands within the boundaries of the Reservation, as originally established under the Second Treaty of Fort Bridger of July 3, 1868, 15 Stat. 673, and companion executive orders of June 14, 1867, 1 C. Kappler 835-837 (1904), and July 30, 1869, 1 C. Kappler 838-839 (1904), as fixed by the federal survey of 1873 that have not been ceded by the Tribes to the United States pursuant to the following Tribal/federal agreements:

.1 Agreement of May 14, 1880, ratified by the Act of February 23, 1889, ch. 203, 25 Stat. 687.

.2 Agreement of July 18, 1881, ratified by the Act of July 3, 1882, ch. 268, 22 Stat. 148.

.3 Agreement of May 27, 1887, ratified by the Act of September 1, 1888, ch. 936, 25 Stat. 452, excepting those lots within the Pocatello Townsite which were not ceded by such agreement.

.4 Agreement of February 5, 1898, ratified by the Act of June 6, 1900, ch. 813, 31 Stat. 672, excepting Allotment Nos. T-8, 45, 46, 48, 50, 61, and 71 owned

by the Tribes or held in restricted fee or trust status for the Tribes by the United States.

4.20 "Fort Hall Indian Irrigation Project" means the federal project constructed, in part, to provide water for the irrigation of lands on the Reservation. The following federal statutes authorized the Fort Hall Indian Irrigation Project:

- .1 Act of August 15, 1894, ch. 290, 28 Stat. 286, 305.
- .2 Act of March 1, 1907, ch. 2285, 34 Stat. 1015, 1024.
- .3 Act of April 30, 1908, ch. 153, 35 Stat. 70, 78.
- .4 Act of April 4, 1910, ch. 140, 36 Stat. 269, 274.
- .5 Act of May 24, 1922, ch. 199, 42 Stat. 552, 56.
- .6 Act of May 9, 1924, ch. 151, 43 Stat. 117.
- .7 Act of June 30, 1948, ch. 767, 62 Stat. 1167.
- .8 Act of September 30, 1950, ch. 1114, 64 Stat. 1083.
- .9 Act of August 31, 1954, ch. 1159, 68 Stat. 1026.
- .10 Act of August 17, 1961, Pub. L. 87-154, 75 Stat. 390.

4.21 "Grays Lake" means the storage facility used to store water for the benefit of the Fort Hall Indian Irrigation Project.

4.22 "Idaho Department of Water Resources" or "IDWR" means the executive agency of the State of Idaho created by Idaho Code § 42-1701 (1977), or any successor agency.

4.23 "Idaho Water Resource Board" or "IWRB" means the Idaho State Water Resource Agency constituted in accordance with Idaho Const. art XV, § 7, or any successor agency.

4.24 "Impairment in the quality of water," applicable only in the context of a change in the water right described in

Article 7.1.1 pursuant to Article 7.6, means a diminishment in the quality of water being diverted for a water right to the extent that it is no longer useful for its intended purpose.

4.25 "Indian" means any person who:

- .1 is a member of a tribe recognized as eligible for special programs and services provided by the United States because of the person's status as an Indian; or
- .2 is recognized as an Indian person under Tribal law; or
- .3 holds or is recognized by the Secretary as eligible to hold restricted trust property on the Reservation.

4.26 "Indian lands" means all lands within the exterior boundaries of the Reservation that are held in trust for the Tribes or owned by Indians and those lands outside the exterior boundaries of the Reservation held in trust by the United States for the Tribes or an enrolled member thereof.

4.27 "Injury to a water right," applicable only in the context of a change of the water right described in Article 7.1.1 pursuant to Article 7.6, means a diminishment in quantity or an impairment in the quality of water available to a senior or a junior water right holder as a consequence of a change, except that no water right holder is required to continue to waste water for the benefit of any other water right holders.

4.28 "Instream flows" means a quantity of water in a stream reach to maintain or to enhance the integrity of an ecosystem.

- 4.29 "Irrigation use" means application of water to the land surface or root zone of the soil for the purpose of producing crops, lawn or landscaping on that land.
- 4.30 "Michaud Contract" means that Memorandum Agreement of April 25, 1957 between the Bureau of Reclamation and the Bureau of Indian Affairs relating to the Water Supply for the Michaud Division of the Fort Hall Indian Reservation.
- 4.31 "Michaud Division" means that division of the Fort Hall Indian Irrigation Project authorized by the Act of August 31, 1954, ch. 1159, 68 Stat. 1026.
- 4.32 "Other rights" means other water rights used on all or a portion of the lands listed as the place of use for the water right described.
- 4.33 "Palisades Reservoir" means a water storage facility of the federal Minidoka Project initially authorized under the provisions of the federal reclamation laws by the presentation to the President and the Congress of the report of December 9, 1941, H.R. Doc. No. 457, 77th Cong., 1st Sess., by the Secretary of the Interior, and reauthorized by section 1 of the Act of September 30, 1950, ch. 1114, 64 Stat. 1083.
- 4.34 "Parties" means the United States, the State of Idaho, the Tribes, and the Committee of Nine of Water District 01.
- 4.35 "Period of use" means the time of the year when water may be used for a particular purpose.
- 4.36 "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the state

of Idaho or any political subdivision or instrumentality thereof, the United States or any political subdivision or instrumentality thereof, an Indian tribe or political subdivision or instrumentality thereof, or any other public or private entity.

- 4.37 "Place of use" means the location where water is used.
- 4.38 "Point of diversion" or "POD" means any location at which water is diverted from the water system. A numeral to the right of the legal description indicates the number of existing points of diversion within a tract.
- 4.39 "Point of injection" means any location at which water that has been diverted from the water system is placed back into the water system. A numeral to the right of the legal description indicates the number of existing points of injection within a tract.
- 4.40 "Point of rediversion" means the location at which water that has been diverted from the water system and then placed back into the water system is again diverted from the water system. A numeral to the right of the legal description indicates the number of existing points of rediversion within a tract.
- 4.41 "Priority date" means the priority date assigned to the water right.
- 4.42 "Purpose of use" means the nature of use of the water right.
- 4.43 "Rent" means a temporary legal conveyance by the Tribes of the right to use storage water pursuant to Idaho Code

§ 42-1761 for a fixed period of time during which ownership of the federal contract storage right is retained for the benefit of the Tribes.

- 4.44 "Reservation Watermaster" means the Tribal officer or any successor designated to administer the Tribal Water Code.
- 4.45 "Right number" means the number assigned to each decreed water right for purposes of identification. The first two numerals of the right number indicate the department's hydrologic basin number assigned by IDWR.
- 4.46 "Secretary" means the Secretary of the United States Department of the Interior or a duly authorized representative thereof.
- 4.47 "Shoshone-Bannock Water Bank" means the Tribal water bank established pursuant to Idaho Code § 42-1761 to provide for rental of stored water outside the Reservation.
- 4.48 "Snake River Basin Adjudication" or "SRBA" means Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987 entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System, which was commenced pursuant to Idaho Code § 42-1406A (Supp. 1989).
- 4.49 "Snake River Watermaster" means the Watermaster of Water District 01 or any successor.
- 4.50 "Source" means the named or described source of water within the water system.
- 4.51 "State" means the State of Idaho.

- 4.52 "Stockwater" means the use of water solely for livestock or wildlife consumption including associated losses.
- 4.53 "Transfer" means any change in a point of diversion, place of use, period of use or purpose of use for a water right.
- 4.54 "Tribal water right(s)" means those water rights confirmed and recognized in this Agreement in Articles 6 and 7 as rights held in trust for the Tribes by the United States, including those rights so held for the benefit of individual Indians on Indian lands.
- 4.55 "Tribes" or "Tribal" means the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation in Idaho as the collective successors-in-interest of Indian signatories to the Second Treaty of Fort Bridger of July 3, 1868, 15 Stat. 673, and subsequent Tribal/federal agreements.
- 4.56 "United States" means the United States of America.
- 4.57 "Upper Snake River Basin" means that portion of the Snake River Basin upstream from the Hells Canyon Dam, the lowest of the three dams authorized as FERC Project No. 1971.
- 4.58 "Water District 01" means the instrumentality created by the Director of the IDWR pursuant to Idaho Code § 42-604 (1977).
- 4.59 "Walton Right" means a water right claim asserted by a non-Indian based upon the decision in Colville Confederated Tribes v. Walton, 647 F.2d 42 (9th Cir. 1981).
- 4.60 "Water system" means all rivers, streams, lakes, springs, groundwater or other water sources within the Snake River Basin within the State of Idaho.

4.61 "Winters Doctrine" means the federal legal principles announced by the United States Supreme Court in Winters v. United States, 207 U.S. 564 (1908).

ARTICLE 5. PARTIES AND AUTHORITY

5.1 The Governor has authority to execute this Agreement pursuant to Idaho Const. art. IV, § 5 and Idaho Code § 67-802 (Supp. 1989).

5.2 The Attorney General, or any duly designated official of the Office of the Idaho Attorney General, has authority to execute this Agreement pursuant to his authority to settle litigation as provided for in Idaho Const. art. IV, § 1, and Idaho Code § 64-1401 (Supp. 1989).

5.3 The Idaho Water Resource Board has authority to execute this Agreement pursuant to Idaho Code § ⁴²⁻1734(3) (Supp. 1989) and Executive Order Nos. 85-9 and 87-9. ✓

5.4 The Fort Hall Business Council has authority to execute this Agreement on behalf of the Tribes pursuant to the following:

.1 The sovereign powers reserved by and for the Tribes in the Second Treaty of Fort Bridger of July 3, 1868, 15 Stat. 673 as well as subsequent Tribal/federal agreements; and

.2 Article VI, Section 1(a) of the Tribes' 1936 Constitution and Bylaws, as amended.

5.5 The Secretary has authority to execute this Agreement on behalf of the United States Department of the Interior and in his trust capacity for the Tribes pursuant to Article I,

§ 8, Clause 3 and Article II, § 2, Clause 2 of the Constitution of the United States, as well as 25 U.S.C. §§ 2 and 9 (1982) and 43 U.S.C. § 1457 (1982).

5.6 The United States Attorney General, or any duly designated official of the United States Department of Justice, has authority to execute this Agreement on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-517 (1982).

5.7 The Committee of Nine executes this Agreement as an advisory committee of Water District 01.

5.8 Each signer for the United States, Tribes, and State, by executing this Agreement, represents and states that the signer has taken or will take the necessary administrative and legal action to procure the actual authority to bind the signer's principal.

ARTICLE 6. TRIBAL WATER RIGHTS FOR PRESENT AND FUTURE USE

6.1 The basis for the rights to use waters arising on, under, flowing across, adjacent to, or otherwise appurtenant to the Reservation to satisfy the purposes of the Reservation as set forth in the Second Treaty of Fort Bridger of July 3, 1868 and companion executive orders of June 14, 1867 and July 30, 1869, is the Winters Doctrine. The basis for these rights is reaffirmed in the following acts and agreements between the Tribes and the United States:

.1 Agreement of May 14, 1880, ratified by the Act of February 23, 1889, ch. 203, 25 Stat. 687.

- .2 Agreement of July 18, 1881, ratified by the Act of July 3, 1882, ch. 268, 22 Stat. 148.
- .3 Agreement of May 27, 1887, ratified by the Act of September 1, 1888, ch. 936, 25 Stat. 452.
- .4 Agreement of February 5, 1898, ratified by the Act of June 6, 1900, ch. 813, 31 Stat. 692.
- .5 Act of May 9, 1924, ch. 151, 43 Stat. 117.

6.2 The parties hereto find and agree that the Tribal water rights for the present and future uses in the Upper Snake River Basin amount to a right to divert up to 581,031 AFY from the Snake River Basin for present and future irrigation, DCMI, instream flow, hydropower and stock water uses as set forth in Article 7 of this Agreement. Nonuse of all or any part of the Tribal water rights shall not be construed as a relinquishment, forfeiture or abandonment of the rights.

ARTICLE 7. LIST OF TRIBAL WATER RIGHTS

The parties agree that water supplied from the following sources shall constitute the Tribal water rights:

7.1 Surface water use rights:

.1 Right No. A01-10223

- .i Source: Snake River/Sand Creek
- .ii Annual Diversion Volume: 100,000 AFY increasing to 115,000 AFY as (1) future reservation lands are irrigated from this source, or (2) as corresponding amounts of the water rights for the ceded lands of the Fort

Hall Indian Irrigation Project are relinquished by the United States.

.iii Diversion Rate: 390.00 CFS increasing to 470.00 CFS at the same relative rate as the volume in ii. above.

.iv Annual Volume of Consumptive Use: 60,986 AFY

.v Priority Date: June 14, 1867

.vi Points of Diversion:

SESWNE Sec 31 Twp 1N Rge 37E BM

(Snake River into Reservation Canal)

NENWNW Sec 7 Twp 2S Rge 37E BM

(Sand Creek into Reservation Canal)

Points of Injection:

NESWSE Sec 24 Twp 2S Rge 36E BM

(Reservation Canal into Blackfoot River)

Points of Rediversion:

NENENE Sec 13 Twp 3S Rge 35E BM

(Blackfoot River into Fort Hall Main Canal)

NWNENW Sec 14 Twp 3S Rge 35E BM

(Blackfoot River into North Canal)

Future points of diversion may be developed in accordance with Articles 7.6, 7.7 and 7.8.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 14,687 present and 8,672 future acres for a total of 23,359 acres.

.ix Basis of Right: Winters Doctrine

.x Remarks:

- .a The rate of diversion for this water right shall be measured at the head of the Reservation Canal located in SESWNE Sec 31 Twp 1N Rge 37E B.M.
- .b The volume of diversion for this water right shall be measured at the Drop located in SENWSE Sec 13 Twp 2S Rge 36E BM downstream from the point at which Sand Creek empties into the Reservation Canal.
- .c This right combined with the other rights described in Articles 7.1.18, 7.1.19 and 7.1.20 provide the water supply for up to 53,828 acres from the combined water sources but none of the limitations of diversion rate or volume shall be exceeded for this right in providing the water supply.
- .d The available inflow to the Reservation Canal upstream from the Drop, including Sand Creek, shall be counted as part of this water right up to the demand of the North and Main Canals. The parties recognize that the water flow available from Sand Creek fluctuates to such extremes that only approximately 85

percent (85%) of the flows from Sand Creek needed to meet the demand of the North and Main Canals would normally be useable as a part of this water right with the Equalizing Reservoir rehabilitated and maintained at 5,000 acre-feet active capacity. The cost of rehabilitating and maintaining the Equalizing Reservoir are estimated at between \$5 and \$15 million initially and \$150,000 per year based upon 1989 costs. To avoid these great costs, the parties agree that the portion of Sand Creek that was used with the control afforded by the Equalizing Reservoir under conditions existing in 1989 shall continue to be used when the Snake River is under regulation by the Snake River Watermaster and will be considered part of this water right. When the Snake River is under regulation by the Snake River Watermaster fifteen percent (15%) of the computed Sand Creek flows, when returned to the Snake River through the Blackfoot River because of lack of control with the present Equalizing Reservoir, shall be considered as natural flow credited to

downstream water users and for which no exchange of storage will be made under this Agreement. All of the remaining Sand Creek water not diverted through the Main and North Canals because of the physical limitations of the Equalizing Reservoir, in excess of fifteen percent (15%) up to 50,000 AFY as determined by gaging, when the Snake River is under regulation by the Snake River Watermaster shall be delivered to the North Side Canal Company in exchange for an equal amount of storage water from Palisades or Jackson Lake Reservoirs. The actual storage water from Palisades or Jackson Lake Reservoirs will be released to meet the Snake River diversion requirements of the Tribes that would have been met by Sand Creek. This water shall be deemed the first storage water released from the American Falls Reservoir for the North Side Canal Company.

- .2 Right No. A27-11373
 - .i Source: Ross Fork Creek/Ross Fork Basin groundwater
 - .ii Annual Diversion Volume: 5,000 AFY

- .iii Diversion Rate: 29.07 CFS
- .iv Annual Volume of Consumptive Use: 3,320 AFY
- .v Priority Date: June 14, 1867
- .vi Existing Points of Diversion:
 - SENWNE Sec 4, SESENE Sec 10, SENWSW Sec 17, SWSESW Sec 21, NESWNW Sec 34 all in Twp 5S Rge 36E BM
 - NWNWSE Sec 31 (2 POD), SWSWSE Sec 33 all in Twp 4S Rge 36E BM
 - NENENE Sec 36 Twp 4S Rge 35E BMFuture Points of Diversion may be developed as needed within the Ross Fork Creek basin to utilize this water right within the Ross Fork Creek basin.
- .vii Purpose and Period of Use:
 - Irrigation 3/15 - 11/15
- .viii Place of Use: 1,503 present and future acres.
- .ix Basis of Right: Winters Doctrine
- .x Remarks:
 - .a The Tribes shall have the option of using surface water or groundwater diverted within the Ross Fork Creek basin to satisfy this right, in whole or in part, provided that any diversions of surface water or groundwater by the Tribes in excess of 5,000 AFY from the Ross Fork Creek Basin shall be charged against the

Tribal groundwater right set forth in Article 7.2.1 of this Agreement.

- .3 Right No. A27-11374
 - .i Source: Lincoln Creek/Lincoln Creek Basin groundwater
 - .ii Annual Diversion Volume: 5,700 AFY
 - .iii Diversion Rate: 33.00 CFS
 - .iv Annual Volume of Consumptive Use: 3,768 AFY
 - .v Priority Date: June 14, 1867
 - .vi Existing Points of Diversion:
 - NENESE Sec 25 Twp 3S Rge 36E BM
 - NENWSE Sec 31 Twp 3S Rge 36E BMFuture points of diversion may be developed as needed within the Lincoln Creek Basin to utilize this water right within the Lincoln Creek drainage basin.
 - .vii Purpose and Period of Use:
 - Irrigation 3/15 - 11/15
 - .viii Place of Use: 1,701 present and future acres.
 - .ix Basis of Right: Winters Doctrine
 - .x Remarks:
 - .a The Tribes shall have the option of using surface water or groundwater diverted within the Lincoln Creek basin to satisfy this right, in whole or in part, provided that any diversions of surface water or

groundwater by the Tribes in excess of 5,700 AFY from the Lincoln Creek basin shall be charged against the Tribal groundwater right set forth in Article 7.2.1 of this Agreement.

- .4 Right No. 29-00466
- .i Source: Bannock Creek
 - .ii Annual Diversion Volume: 3,095 AFY
 - .iii Diversion Rate: 16.25 CFS
 - .iv Annual Volume of Consumptive Use: 1,842 AFY
 - .v Priority Date: June 14, 1867
 - .vi Existing Points of Diversion:
NENWSE Sec 32 Twp 7S Rge 33E BM
SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in
Twp 8S Rge 33E BM
NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all
in Twp 9S Rge 33E BM
 - .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
 - .viii Place of Use: 774 present and future acres.
 - .ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].
 - .x Remarks:

.5 Right No. 29-00467

.i Source: Bannock Creek, West Fork Bannock
Creek

.ii Annual Diversion Volume: 629 AFY

.iii Diversion Rate: 3.30 CFS

.iv Annual Volume of Consumptive Use: 374 AFY

.v Priority Date: April 1, 1889

.vi Existing Points of Diversion:

NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in
Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all
in Twp 9S Rge 33E BM

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 157 present and future acres.

.ix Basis of Right: The basis of the right is the
Winters Doctrine with the relative share and
priorities of the water allocations determined
by the Bannock Creek Decree [United States v.
Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.6 Right No. 29-00468

.i Source: Rattlesnake Creek

.ii Annual Diversion Volume: 571 AFY

- .iii Diversion Rate: 3.00 CFS
- .iv Annual Volume of Consumptive Use: 340 AFY
- .v Priority Date: April 1, 1892
- .vi Existing Points of Diversion:
NENWSE Sec 32 Twp 7S Rge 33E BM
SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in
Twp 8S Rge 33E BM
NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all
in Twp 9S Rge 33E BM
- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: 143 present and future acres.
- .ix Basis of Right: The basis of the right is the
Winters Doctrine with the relative share and
priorities of the water allocations determined
by the Bannock Creek Decree [United States v.
Daniels (D. Idaho April 9, 1907)].
- .x Remarks:

.7 Right No. 29-00469

- .i Source: West Fork Bannock Creek
- .ii Annual Diversion Volume: 190 AFY
- .iii Diversion Rate: 1.00 CFS
- .iv Annual Volume of Consumptive Use: 113 AFY
- .v Priority Date: May 1, 1894
- .vi Existing Points of Diversion:
NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in
Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all
in Twp 9S Rge 33E BM

- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: 48 present and future acres.
- .ix Basis of Right: The basis of the right is the
Winters Doctrine with the relative share and
priorities of the water allocations determined
by the Bannock Creek Decree [United States v.
Daniels (D. Idaho April 9, 1907)].
- .x Remarks:

.8 Right No. 29-00470

- .i Source: West Fork Bannock Creek
- .ii Annual Diversion Volume: 248 AFY
- .iii Diversion Rate: 1.30 CFS
- .iv Annual Volume of Consumptive Use: 147 AFY
- .v Priority Date: April 1, 1894
- .vi Existing Points of Diversion:
NENWSE Sec 32 Twp 7S Rge 33E BM
SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in
Twp 8S Rge 33E BM
NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all
in Twp 9S Rge 33E BM

- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: 62 present and future acres.
- .ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].
- .x Remarks:

.9 Right No. 29-00471

- .i Source: Bannock Creek
- .ii Annual Diversion Volume: 248 AFY
- .iii Diversion Rate: 1.30 CFS
- .iv Annual Volume of Consumptive Use: 147 AFY
- .v Priority Date: April 1, 1894
- .vi Existing Points of Diversion:
NENWSE Sec 32 Twp 7S Rge 33E BM
SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in
Twp 8S Rge 33E BM
NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all
in Twp 9S Rge 33E BM
- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: 62 present and future acres.
- .ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and

priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.10 Right No. 29-00472

- .i Source: West Fork Bannock Creek
- .ii Annual Diversion Volume: 190 AFY
- .iii Diversion Rate: 1.00 CFS
- .iv Annual Volume of Consumptive Use: 113 AFY
- .v Priority Date: April 1, 1898
- .vi Existing Points of Diversion:
 - NENWSE Sec 32 Twp 7S Rge 33E BM
 - SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM
 - NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM
- .vii Purpose and Period of Use:
 - Irrigation 3/15 - 11/15
- .viii Place of Use: 48 present and future acres.
- .ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.11 Right No. 29-00473

- .i Source: West Fork Bannock Creek
- .ii Annual Diversion Volume: 190 AFY
- .iii Diversion Rate: 1.00 CFS
- .iv Annual Volume of Consumptive Use: 113 AFY
- .v Priority Date: April 1, 1898
- .vi Existing Points of Diversion:
 - NENWSE Sec 32 Twp 7S Rge 33E BM
 - SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM
 - NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM
- .vii Purpose and Period of Use:
 - Irrigation 3/15 - 11/15
- .viii Place of Use: 48 present and future acres.
- .ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].
- .x Remarks:

.12 Right No. 29-00474

- .i Source: West Fork Bannock Creek
- .ii Annual Diversion Volume: 190 AFY
- .iii Diversion Rate: 1.00 CFS
- .iv Annual Volume of Consumptive Use: 113 AFY

- .v Priority Date: April 1, 1901
- .vi Existing Points of Diversion:
NENWSE Sec 32 Twp 7S Rge 33E BM
SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in
Twp 8S Rge 33E BM
NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all
in Twp 9S Rge 33E BM
- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: 48 present and future acres.
- .ix Basis of Right: The basis of the right is the
Winters Doctrine with the relative share and
priorities of the water allocations determined
by the Bannock Creek Decree [United States v.
Daniels (D. Idaho April 9, 1907)].
- .x Remarks:

.13 Right No. A29-12049

- .i Source: Bannock Creek
- .ii Annual Diversion Volume: 18,833 AFY
- .iii Diversion Rate: 98.87 CFS
- .iv Annual Volume of Consumptive Use: 11,205 AFY
- .v Priority Date: June 14, 1867
- .vi Existing Points of Diversion:
NENWSE Sec 32 Twp 7S Rge 33E BM
SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in
Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all
in Twp 9S Rge 33E BM

NESWSE Sec 6 Twp 7S Rge 33E BM

(3 - 20 HP pumps for Michaud Project)

Future Points of Diversion may be developed
within the Bannock Creek basin to utilize this
water right within the Bannock Creek drainage
basin.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 4,708 present and future acres.

.ix Basis of Right: Winters Doctrine

.x Remarks:

.a The Tribes and the United States agree to
exercise this right in a manner that will
ensure that persons with water rights
decreed in the Bannock Creek Decree
[United States v. Daniels (D. Idaho
April 9, 1907)] and that are confirmed in
the SRBA continue to receive their full
legal entitlement.

.14 Right No. A29-12050

.i Source: Portneuf River/Jeff Cabin Creek

.ii Annual Diversion Volume: 970 AFY

.iii Diversion Rate: 9.70 CFS

.iv Annual Volume of Consumptive Use: 727.50 AFY

- .v Priority Date: June 14, 1867
- .vi Points of Diversion:
 Future Points of Diversion may be developed within the Portneuf River basin upstream from the point the river enters the Portneuf Reservoir in Sec 11 Twp 6S Rge 38E BM for use within the Portneuf River basin.
- .vii Purpose and Period of Use:
 Irrigation 4/1 - 11/1
- .viii Place of Use: 485 present and future acres.
- .ix Basis of Right: Winters Doctrine
- .x Remarks:

.15 Right No. 29-00231

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 259.3 AFY
- .iii Diversion Rate: 1.59 CFS
- .iv Annual Volume of Consumptive Use: 154.3 AFY
- .v Priority Date: February 16, 1869
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
 Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 61 (NESW, SENW, Sec 35 Twp 6S Rge 38E) for 79.53 acres.
- .ix Basis of Right: The Winters Doctrine per the Memorandum Decision in United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928) and

the decree of the United States District Court, Eastern Division, dated April 8, 1929.

.x Remarks:

.16 Right No. 29-00238

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 282.5 AFY
- .iii Diversion Rate: 1.733 CFS
- .iv Annual Volume of Consumptive Use: 168.14 AFY
- .v Priority Date: February 16, 1869
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 71 (SENW, SWNE, Sec 36 Twp 6S Rge 38E) for 86.67 acres.
- .ix Basis of Right: The Winters Doctrine per the Memorandum Decision in United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928) and the decree of the United States District Court, Eastern Division, dated April 8, 1929.

.x Remarks:

.17 Right No. A29-12051

- .i Source: Mink Creek
- .ii Annual Diversion Volume: 104.3 AFY
- .iii Diversion Rate: 0.75 CFS
- .iv Annual Volume of Consumptive Use: 62.1 AFY

- .v Priority Date: February 26, 1869
- .vi Points of Diversion: SWNW Sec 21 Twp 7S Rge
35E BM
- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: Allotment T-8 (SWNW Sec 21 Twp
7S Rge 35E BM for 31.75 acres)
- .ix Basis of Right: The Winters Doctrine per
decree of District Court of the Fifth Judicial
District Court of the State of Idaho, in and
for the County of Bannock dated June 5, 1926,
in Smith v. City of Pocatello, Case No. 6669.
- .x Remarks:

.18 Right No. A27-11375

- .i Source: Blackfoot River
- .ii Annual Diversion Volume: 150,000 AFY
- .iii Diversion Rate: 1380 CFS
- .iv Annual Volume of Consumptive Use: 79,546 AFY
- .v Priority Date: June 14, 1867
- .vi Points of Diversion:
SENWNW Sec 7 Twp 2S Rge 38E BM
(Blackfoot River into Little Indian Canal)
NENENE Sec 13 Twp 3S Rge 35E BM
(Blackfoot River into Fort Hall Main Canal)
NWNENW Sec 14 Twp 3S Rge 35E BM
(Blackfoot River into North Canal)

SWSESW Sec. 3 Twp 7S Rge 32E BM
SENWSE Sec. 3 Twp 7S Rge 32E BM
NWNWSW Sec. 2 Twp 7S Rge 32E BM
NESESW Sec. 2 Twp 7S Rge 32E BM
NWNENE Sec. 1 Twp 7S Rge 32E BM
SWNWNW Sec. 6 Twp 7S Rge 33E BM
NESESW Sec. 6 Twp 7S Rge 33E BM
NESESW Sec. 6 Twp 7S Rge 33E BM
SWSWSW Sec. 30 Twp 6S Rge 33E BM

Future Points of Diversion may be developed to divert water from (1) anywhere on the Blackfoot River or (2) ground water within the Reservation as described in Remarks below.

- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: 30,469 present and future acres.
- .ix Basis of Right: Winters Doctrine
- .x Remarks:
 - .a If the natural flow of the Blackfoot River is not sufficient to satisfy this right and other rights to divert Blackfoot River natural flow pursuant to state law, the Tribes may satisfy this Winters right by using the other rights described in Articles 7.1.19 and 7.1.20, provided that the combined use in

satisfaction of this Winters right shall not exceed 150,000 AFY.

- .b If the diversions under this right exceeds 150,000 AFY, the amount in excess of 150,000 AFY shall be charged against the Tribal water right in Article 7.1.1.
- .c This right combined with other rights described in Articles 7.1.1, 7.1.19, and 7.1.20 can be used to irrigate up to 53,828 present and future acres from the combined water sources.
- .d The Tribes and United States agree to exercise this water right in a manner that ensures persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive that full legal entitlement under state law. The parties will specifically enumerate all rights protected by this provision once the SRBA decree for this basin becomes final. These state created water rights are estimated to divert not more than 45,000 AFY of water from the Blackfoot River. In the event this estimate of the amount of existing diversions under state created water

rights is exceeded as a result of the decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribal water rights to account for this change.

.e The Tribes and the United States agree to exercise this right in a manner that will not impair the project entitlements of the Fort Hall Indian Irrigation Project water users.

.f If the water supplied under this right and the other rights described in Articles 7.1.19 and 7.1.20 does not provide 150,000 AFY under the terms of this Agreement, the Tribes may divert groundwater within the Reservation under this right, exclusive of the water rights described in Article 7.2, such that the combined water supply from the other rights described in Articles 7.1.19 and 7.1.20 and surface and groundwater under this right yields 150,000 AFY.

.19 Right No. A27-02007

.i Source: Blackfoot River

.ii Annual Diversion Volume: 348,000 AFY

.iii Diversion Rate: Not limited

- .iv Annual Volume of Consumptive Use:
Included in the other rights described in Articles 7.1.1 and 7.1.18.
- .v Priority Date: September 3, 1907
- .vi Points of Diversion:
NWNE Sec 12 Twp 5S Rge 40E BM (Blackfoot River into Blackfoot Reservoir)

Points of Rediversion:
SENWNW Sec 7 Twp 2S Rge 38E BM
(Blackfoot River into Little Indian Canal)
NENENE Sec 13 Twp 3S Rge 35E BM
(Blackfoot River into Fort Hall Main Canal)
NWNENW Sec 14 Twp 3S Rge 35E BM
(Blackfoot River into North Canal)
- .vii Purposes and Periods of Use:
Irrigation from Storage 3/15 - 11/15
348,000 AFY
Storage for Irrigation 1/1 - 12/31
348,000 AFY
- .viii Place of Use: 30,469 present and future acres.
- .ix Basis of Right: License acquired pursuant to Fort Hall Indian Irrigation Project Act.
- .x Remarks:
.a The rediversion from storage under this right and the other right described in Article 7.1.20 may be used to satisfy the

Blackfoot River natural flow to meet but not exceed the 150,000 AFY Winters entitlement under the water right described in Article 7.1.18. The Tribes may use water from storage under this right in excess of the amount needed to satisfy the Winters entitlement under Article 7.1.18; provided that uses in excess of that amount necessary to satisfy the 150,000 AFY Winters entitlement described in Article 7.1.18 shall be charged against the Tribal water right described in Article 7.1.1.

- .b This right combined with other rights described in Articles 7.1.1, 7.1.18, and 7.1.20 can be used to irrigate up to 53,828 present and future acres from the combined water sources.
- .c The Tribes and the United States agree to exercise this right in a manner that will not impair the project entitlements of the Fort Hall Indian Irrigation Project water users.

.20 Right No. A25-02160

.i Source: Grays Lake

.ii Annual Diversion Volume: 100,000 AFY

- .iii Diversion Rate: Not limited
- .iv Annual Volume of Consumptive Use: Included in the other rights described in Articles 7.1.1 and 7.1.18.
- .v Priority Date: August 23, 1919
- .vi Points of Diversion:
 - SWSWSW Sec 1 Twp 5S Rge 42E BM
(Grays Lake/Clarks Cut Canal)
 - Points of Rediversion:
 - NWNE Sec 12 Twp 5S Rge 40E BM (Blackfoot Reservoir)
 - SENWNW Sec 7 Twp 2S Rge 38E BM
(Blackfoot River into Little Indian Canal)
 - NENENE Sec 13 Twp 3S Rge 35E BM
(Blackfoot River into Fort Hall Main Canal)
 - NWNENW Sec 14 Twp 3S Rge 35E BM
(Blackfoot River into North Canal)
- .vii Purposes and Periods of Use:

Irrigation from Storage	3/15 - 11/15	
		100,000 AFY
Storage for Irrigation	1/1 - 12/31	
		100,000 AFY
- .viii Place of Use: 30,469 present and future acres.
- .ix Basis of Right: Permit numbers 14247 and R-161 acquired pursuant to the Fort Hall Indian Irrigation Project Act

.x Remarks:

- .a The rediversion from storage under this right and the other right described in Article 7.1.19 may be used to satisfy the Blackfoot River natural flow to meet but not exceed the 150,000 AFY Winters entitlement under the water right described in Article 7.1.18. The Tribes may use water from storage under this right in excess of the amount needed to satisfy the Winters entitlement under Article 7.1.18; provided that uses in excess of that amount necessary to satisfy the 150,000 AFY Winters entitlement described in Article 7.1.18 shall be charged against the Tribal water right described in Article 7.1.1.
- .b This right combined with other rights described in Articles 7.1.1, 7.1.18, and 7.1.19 may be used to irrigate up to 53,828 present and future acres from the combined water sources.
- .c The Tribes and the United States agree to exercise this right in a manner that will not impair the project entitlements of the Fort Hall Indian Irrigation Project water users.

7.2 Groundwater use rights:

.1 Right No. A27-11376

- .i Source: Groundwater within the Reservation
- .ii Annual Diversion Volume: 125,000 AFY
- .iii Diversion Rate: 813.40 CFS
- .iv Annual Volume of Consumptive Use: 93,615 AFY
- .v Priority Date: June 14, 1867
- .vi Existing Points of Diversion:

SWSESW Sec. 3 Twp 7S Rge 32E BM
SENWSE Sec. 3 Twp 7S Rge 32E BM
NWNWSW Sec. 2 Twp 7S Rge 32E BM
NESENW Sec. 2 Twp 7S Rge 32E BM
NWNENE Sec. 1 Twp 7S Rge 32E BM
SWNWNW Sec. 6 Twp 7S Rge 33E BM
NESESW Sec. 6 Twp 7S Rge 33E BM
NESESW Sec. 6 Twp 7S Rge 33E BM
SWSWSW Sec. 30 Twp 6S Rge 33E BM

Additional existing points of diversion will be identified by February 1, 1991.

Future points of diversion may be developed to utilize this water right on any Indian lands.

.vii Purposes and Periods of Use:

Irrigation	3/15 - 11/15	115,000 AFY
DCMI	1/1 - 12/31	10,000 AFY

- .viii Place of Use: 42,592 present and future acres. Present and future DCMI uses on any Indian lands.
- .ix Basis of Right: Winters Doctrine
- .x Remarks:
- .a If the Tribes' combined surface water and groundwater diversions from the Ross Fork Creek basin exceed 5,000 AFY, or the Tribes' combined surface water and groundwater diversions from the Lincoln Creek basin exceed 5,700 AFY, such excesses shall be charged against this Tribal groundwater right.
- .b The nine wells used to supplement the surface water portion of the Michaud Division divert water included in this Tribal water right.
- .c Lot Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of Block No. 191; Lot No. 1 of Block 192; Lot Nos. 1, 2, 3, 4, 5, 6, 7, and 8 of Block No. 196; Lot Nos. 19 and 20 of Block No. 341; Lot No. 5 of Block No. 593; and Lot No. 7 of Block No. 599 within the City of Pocatello remain Indian lands and may utilize water under this water right.

.d Allotment Nos. 45, 46, 48, 50, 60 and 71 within the Portneuf River basin may utilize water under this right.

.2 Right No. A29-12052

.i Source: Bannock Creek basin groundwater

.ii Annual Diversion Volume: 23,500 AFY

.iii Diversion Rate: 154.93 CFS

.iv Annual Volume of Consumptive Use: 17,843 AFY

.v Priority Date: June 14, 1867

.vi Points of Diversion:

Future points of diversion may be developed as needed within the Bannock Creek basin to utilize this water right within the Bannock Creek drainage basin.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 8,704 future acres.

.ix Basis of Right: Winters Doctrine

.x Remarks:

.a The Tribes have the right to the annual yield of the Bannock Creek basin up to a combined surface and groundwater diversion of 48,500 AFY.

.b If the Tribes' combined surface and groundwater diversion from this basin exceeds 48,500 AFY, such excess shall be

charged against the Tribal groundwater right in Article 7.2.1.

- .c The Tribes and United States agree to exercise this water right in a manner that ensures persons diverting ground water from the Bannock Creek drainage basin prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive their full legal entitlement under state law. The parties will specifically enumerate the rights protected by this provision once the SRBA decree for this basin becomes final. These state created water rights are estimated to divert not more than 2,400 AFY of water from the ground water of the Bannock Creek drainage basin. In the event this estimate of the amount of existing diversions under state water rights is changed as a result of the decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribal Water Rights to account for this change.

7.3 Federal contract storage water rights held in trust by the United States for the benefit of the Tribes:

.1 The United States holds in trust federal contract storage rights for water that accrues to two and eight thousand and fifty nine ten thousandths percent (2.8059%) of the storage space in American Falls Reservoir and six and nine thousand nine hundred and seventeen ten thousandths per cent (6.9917%) of the storage space in Palisades Reservoir for the benefit of the Tribes and 187.7 acres of other lands served by the Michaud Division of the Fort Hall Indian Irrigation Project. These federal contract storage rights are presently equivalent to the following storage space in American Falls and Palisades Reservoirs:

American Falls Reservoir	46,931 AF
Palisades Reservoir	83,900 AF

- .2 The federal contract storage rights described in Article 7.3.1 may be used to irrigate up to 33,938 present and future acres of Indian lands with an annual volume of consumptive use not to exceed 79,542 AFY. Indian lands in excess of 33,938 acres may be irrigated with the water that accrues to the federal contract storage rights described in Article 7.3.1 if no other water rights are injured thereby.
- .3 The Tribes and the Secretary agree to continue to exchange storage water from the federal contract storage rights described in Article 7.3.1 for water diverted from the Portneuf River as provided for in

Article 8 of the Michaud Contract. The Tribes may identify the reservoir storage space to be used to provide storage water for this exchange. In the event no specific storage is identified, water from the Palisades storage space shall be the first water to be used for this exchange.

.4 The Tribes shall have the right to create a Shoshone-Bannock Water Bank pursuant to Idaho Code §§ 42-1761 through 42-1765 in order to rent as prescribed in Article 7 for any beneficial use outside the Reservation all or any part of the water accruing to the federal contract storage rights set forth in Article 7.3.1 that is not used on Indian lands as provided in Article 7.3.2 or exchanged pursuant to Article 7.3.3; provided that

.i storage water from Palisades Reservoir is rented and delivered for use within the Snake River Basin anywhere above Milner Dam, and

.ii storage water from the American Falls Reservoir is rented and delivered for use in the Snake River Basin anywhere within Idaho.

.5 The rental of the federal contract storage water rights in Article 7.3.1 through the Shoshone-Bannock Water Bank shall not be subject to any limitation based on the following:

.i any provision of the Michaud Contract except as set forth in Article 7.3.3;

- .ii any reduction of the quantity of water available under any other existing water rights since any such reductions are mitigated by the express federal commitments in Article 12.3;
 - .iii any conflict with the public welfare or local public interest of the citizens of Idaho or the conservation of its water since any such conflicts are mitigated by the express federal commitments in Article 12.3; or
 - .iv any refill penalty for renting water from American Falls Reservoir below Milner Dam because of the mitigation provided by the express federal commitments in Article 12.3.
- .6 The parties agree that the purposes of the Shoshone-Bannock Water Bank are to:
- .i put to beneficial use the Tribal water rights set forth in Article 7.3.1;
 - .ii provide a source of adequate water supplies to benefit new and supplemental water uses;
 - .iii provide a source of Tribal funding for improving water user facilities and efficiencies;
 - .iv provide a mechanism for the Tribes to realize the value of their federal contract storage rights resulting from settlement of this litigation; and

.v provide for the continuation of good-faith cooperation among the parties to this Agreement.

The State agrees not to take any action that will interfere with the nature, scope, spirit and purposes of the Shoshone-Bannock Water Bank.

- .7 The Shoshone-Bannock Water Bank provided for in Article 7.3.4 shall be operated by a Tribal Rental Pool Committee, which shall consist of the Superintendent of the Minidoka Project, the Snake River Watermaster, the Reservation Watermaster and three individuals designated by the Fort Hall Business Council unless the Tribes, the State and the United States mutually agree otherwise in writing.
- .8 The Tribal Rental Pool Committee shall determine and establish priorities for rental of water from the Shoshone-Bannock Water Bank; provided that the Fort Hall Indian Irrigation Project water users shall have a right of first refusal to rent any storage water available for rent pursuant to Article 7.3.4.
- .9 The Tribes may elect to assign for rental all or any portion of the water accruing to the federal contract storage rights in Article 7.3.1 that is not rented through the Shoshone-Bannock Water Bank or otherwise used or exchanged pursuant to Article 7 to any water bank created pursuant to state law in the Snake River basin above Milner Dam on the same terms and

conditions as any other water user may assign water to such a water bank.

.10 The parties agree that proceeds from renting all or any part of the federal contract storage rights pursuant to Article 7 shall not be subject to any form of taxation or alienation by the State or the United States, as provided for by legislation required by this Agreement, absent the written consent of the Tribes.

.11 The Tribes' exercise of the right to rent the storage water accruing to the federal contract storage rights described in Article 7.3.1 shall in no event be construed or interpreted as

.i any forfeiture, abandonment, relinquishment, or other loss of all or any part of their federal contract storage rights, or

.ii subject to any constraints on the amount of rental income or other compensation received by the Tribes.

.12 Neither the State nor the United States shall be liable for any financial losses suffered by the Tribes or any other person as a result of any rental of water from the Shoshone-Bannock Water Bank pursuant to Article 7.3.4.

7.4 Instream flows on and adjacent to the Reservation:

.1 In addition to the rental of water for instream flows pursuant to Article 7.3, the Tribes shall be entitled

to use storage water accrued to the federal contract storage space listed in Article 7.3.1 not used, exchanged, or rented pursuant to Article 7.3 for instream flows for river reaches on or adjacent to the Reservation.

.2 The Tribes shall have the right to use the natural flows of all waters arising wholly within and traversing only Reservation lands for instream flows.

.3 The Tribes shall have the right to use up to 15,000 AFY from the storage water rights described in Articles 7.1.19 and 7.1.20 for instream flows in reaches of the Blackfoot River. Prior to releasing water for instream flows in reaches of the Blackfoot River, the Tribes agree to give notice as provided in Article 8.5.

7.5 The Tribes may transfer or lease within the Reservation all or any portion of the tribal water rights set forth in this Article 7, if the transfer:

- .1 is to any beneficial use,
- .2 does not exceed the maximum diversion rate not withstanding the period of use,
- .3 does not exceed the annual volume of diversion,
- .4 does not exceed the annual volume of consumptive use,
- .5 is to any place of use within the Reservation, except as to the water rights described in Articles 7.1.2, 7.1.3 and 7.1.14, where the place of use is specifically restricted by this Agreement, and

.6 does not change the source, except as permitted by Articles 7.1.2, 7.1.3, and 7.1.18.

7.6 The Tribes may change the points of diversion and periods of use of the water right described in Article 7.1.1 provided the change:

.1 is to any beneficial use,

.2 does not exceed the maximum diversion rate notwithstanding the period of use,

.3 does not exceed the annual volume of diversion,

.4 does not exceed the annual volume of consumptive use, and

.5 does not result in an injury to a water right.

7.7 Whenever the Tribes or the United States intend to change or add a point of diversion or change the period of use of all or part of the water right described in Article 7.1.1, the Tribes or the United States will prepare a written Notice of Transfer of this water right. The Tribes or the United States shall serve a copy of the Notice of Transfer on each member of the Intergovernmental Board and shall publish the Notice of Transfer at least once a week for two consecutive weeks in a newspaper printed within the county wherein the point of diversion lies, or in the event no newspaper is printed within that county, then in a newspaper of general circulation therein. The Tribes or the United States shall complete the service and publication at least one hundred and twenty (120) days

prior to the intended change. The Notice of Transfer shall contain the following information:

- .1 The amount of water in CFS and/or AFY that is to be changed including any reductions that will occur at any existing points of diversion, if applicable;
- .2 The legal descriptions of the locations of any new or changed points of diversion including any points of diversion that will no longer be used, if applicable;
- .3 The period of use during which the water will be used as a result of the change including periods during which water will no longer be used or periods during which water use will be reduced as a result of the change; and
- .4 A statement that any person who believes that the change will injure a water right shall file a Notice of Objection with the Intergovernmental Board within ten days of the last date of service or publication.

7.8 Any person claiming that a change in a point of diversion or period of use of the Tribal water right in Article 7.1.1 will injure a water right shall first request mediation before the Intergovernmental Board prior to seeking judicial relief.

- .1 In any proceeding, the person claiming that a change will injure the objector's water right shall have the burden of proving that an injury will occur.
- .2 Upon receipt of any objection, the Intergovernmental Board shall attempt to mediate the dispute. After

reviewing all relevant data and information, the Intergovernmental Board shall make a recommendation regarding the change if there is a consensus. In the event the Intergovernmental Board determines that the proposed change would injure an objector's water right, its recommendation shall address whether it is possible to mitigate the injury in a way that will allow the Tribes to achieve the purposes of the change.

.3 In the event that the Intergovernmental Board fails to mediate the dispute, judicial relief may be sought by the objector.

7.9 Except as provided in Article 7.3, no Tribal water rights or water may be sold, leased, rented, transferred or otherwise used off the Reservation.

7.10 Stock watering may occur anywhere on Indian lands from any part of the water system on Indian lands and may be used year around as a part of each water right defined in this Agreement except no diversion from a point off the Reservation for stockwater shall be made during the non-irrigation season.

7.11 The Tribes have the right to generate hydropower incidental to water delivery for the other purposes specified in this Agreement as well as pursuant to Article 7.5.

7.12 The Tribes may construct, operate and maintain future storage projects or reservoirs located within the Reservation to the extent that such projects are not

inconsistent with the water rights set forth in this Agreement.

7.13 If any allottee or Tribal member is decreed a water right in the SRBA for Indian lands, there shall be a corresponding reduction in the Tribal water rights set forth in Article 7.

7.14 The State shall have the responsibility to deliver the federal contract storage water described in Article 7.3.1 within any established water district.

ARTICLE 8. ADMINISTRATION OF WATER RIGHTS

8.1 The Parties recognize and respect the sovereignty of the Tribes, the State, and the United States, as well as the powers and limitations accompanying the sovereignty of each government. In order to strike a balance among these sovereign interests, the parties, consistent with applicable law, agree to cooperate in administration of water resources to protect the use of all water rights decreed in the SRBA .

8.2 Except for the Snake River and the Blackfoot River, the parties agree to administer water rights within the Reservation as follows:

.1 The Tribes shall administer the distribution of all Tribal water rights within the Reservation.

.2 Upon reasonable notice, the Tribes and the United States agree to provide access to the State to inspect water monitoring devices and diversions within the

Reservation. The Tribes and the United States may accompany the State.

- .3 The Tribes shall adopt and submit a Tribal Water Code to the Secretary for approval. The Tribal Water Code shall, in part,
 - .i provide for a Reservation Watermaster,
 - .ii establish a Tribal Water Commission to manage the Tribal water delivery systems on the Reservation, and
 - .iii provide for monitoring of and enforcement of Tribal water rights.
- .4 Pending adoption and approval of a Tribal Water Code, the Secretary, as trustee for the Tribes, shall temporarily administer the distribution of the Tribal water rights within the Reservation.
- .5 Consistent with Article 8.2.1, the United States shall administer the distribution of the Fort Hall Indian Irrigation Project water rights and the Fort Hall Agency water rights from the point the water is delivered to the project facilities.
- .6 The State shall administer the distribution of those rights acquired under state law within the Reservation that are not a part of the Fort Hall Agency, Tribal or Fort Hall Indian Irrigation Project water rights.
- .7 Upon reasonable notice and in accordance with applicable law, the Tribes and the United States may inspect water monitoring devices and diversions within

the Reservation for those water rights administered under Article 8.2.6. The State may accompany the Tribes and the United States.

.8 The Tribes or the United States shall install or cause to be installed monitoring devices for administration of Tribal water rights within the Reservation to the same extent as required of other water users in Idaho. The cost of these monitoring devices shall be paid from the funds authorized by Congress as required by Article 13.2. The United States, the Tribes and the State shall monitor those diversions that each party actually administers within the Reservation and report the diversion records each year to the Intergovernmental Board by March 1 of the year after each reporting year.

8.3 Although the water rights from the Blackfoot River have been delivered for over 100 years without any disputes arising between the Tribes, the United States, and the State over administration, the parties heretofore have been unable to agree upon their respective authority to administer water rights from the Blackfoot River. The parties agree to avoid litigation by continuing to administer the water rights decreed in the SRBA from the Blackfoot River as water rights from the Blackfoot River have been administered in the past. The parties also agree as follows:

- .1 To prepare and implement a Blackfoot River Water Management Plan to satisfy the purposes set forth in the Attachment;
- .2 To install or cause to be installed monitoring devices on all present and future points of diversion from the Blackfoot River; and
- .3 To provide access to inspect water monitoring devices and diversions on the Blackfoot River where necessary for administration of rights to divert water from the water system. A party requesting access to a monitoring device shall provide reasonable notice, and the party providing access to the monitoring device or diversion may accompany the inspecting party.

8.4 The parties agree to administer water rights from the Snake River as follows:

- .1 The State shall account for and administer the diversion of water from the Snake River by all water users, including the United States and the Tribes, in conformance with the SRBA decree. The State, in administering such waters, shall ensure the delivery to all water users, including the United States and the Tribes, their legal entitlement to water from natural flow and storage. The United States shall be solely responsible for the physical operation of its Snake River diversion facilities in accordance with the Snake River Watermaster's direction. In the event the United States disputes the Snake River

Watermaster's direction regarding the administration of its Snake River diversion, the dispute shall be resolved by the District Court. Distribution of the water after diversion by the United States shall be in accordance with Articles 8.2.1, 8.2.4, 8.2.5, and 8.3.

.2 IDWR shall provide the Intergovernmental board, upon request, any Snake River water measurement data or reports gathered or prepared by or for IDWR.

.3 Upon reasonable notice, the State agrees to provide the Tribes and the United States access to inspect water monitoring devices and diversions on the Snake River where necessary for purposes of the administration of Tribal or Fort Hall Indian Irrigation Project water rights from the water system. The State may accompany the party inspecting the monitoring device or diversion.

8.5 Because of the need to provide for cooperative planning and management of water resources, the Tribes or the United States agree to prepare a written Notice of Use of a Tribal water right whenever the Tribes or the United States intend to (1) transfer or lease within the Reservation the right to an existing use, (2) put to use within the Reservation any portion of the Tribal water right which is not in present use, or (3) undertake a combination of (1) and (2).

.1 The Notice of Use shall contain the following information:

- .i The Right Number of the Tribal water right(s) described in Articles 7.1.1 through 7.3.1 to be changed or used;
 - .ii A legal description of the location where the Tribes or the United States will use the water right;
 - .iii A legal description of the location where the Tribes or the United States will reduce the use of water as a consequence of the transfer and of the point of diversion where the Tribes or the United States will reduce the diversion, if applicable;
 - .iv The ownership status of the land where the Tribal water right will be used;
 - .v The legal description of the new point of diversion;
 - .vi A narrative description of the proposed diversion works such as the size of pumps, ditches, wells, etc.;
 - .vii The amount of water stated in AFY and in CFS to be used on the location described in Article 8.5.1.ii; and
 - .viii The nature of use of the Tribal water right at the location described in Article 8.5.1.ii.
- .2 Notices involving 25 CFS or more, or 7,500 AFY or more and notices involving any increase in the diversion rate or volume of the right described in Article 7.1.1

shall be served on each member of the Intergovernmental Board at least thirty (30) days prior to the transfer, lease or new use.

.3 Notices involving less than 25 CFS or less than 7,500 AFY shall be served on the Intergovernmental Board annually at the time of the annual report provided for in Article 8.2.8 provided that no notice will be required for transfers, leases or new uses of 0.04 CFS or 2.2 AFY or less.

8.6 The State agrees to provide written notice to the Tribes and the Fort Hall Agency Superintendent whenever an application for a state water right permit is sought for a water use in the Upper Snake River mainstem, the Blackfoot River basin, and the Portneuf River basin. The report shall contain among the following:

- .1 the permit number of the state water right applied for;
- .2 a legal description of the location of the proposed place of use;
- .3 the ownership status of the land where the water will be used, if known;
- .4 the legal description of the proposed point of diversion; and
- .5 a narrative description of the proposed diversion works, such as the size of the pumps, ditches, wells, etc.

ARTICLE 9. INTERGOVERNMENTAL BOARD

- 9.1 In recognition of the concerns of separate sovereigns as well as the hydrologic and economic inter-relationships of water use within the Snake River basin, the parties agree to continue cooperative efforts to efficiently manage water resources and to fairly resolve disputes arising under this Agreement without resorting to litigation.
- 9.2 The parties agree to create a three-member Intergovernmental Board composed of the Chairman of the Fort Hall Business Council, the Director of the Idaho Department of Water Resources, and the Secretary, or their designees.
- 9.3 The Intergovernmental Board shall assist in the implementation of this Agreement and shall mediate disputes arising among the parties regarding the interpretation of this Agreement.

ARTICLE 10. FINALITY OF SETTLEMENT AGREEMENT

- 10.1 In lieu of filing claims by or on behalf of the Tribes in the SRBA and pursuant to Idaho Code § 42-1409(3) (Supp. 1989), the parties agree to submit this Agreement to the Director. The Director shall submit this Agreement and an abstract of the water rights listed in this Agreement to the Fifth Judicial District Court of the State of Idaho, in and for the County of Twin Falls pursuant to Idaho Code § 42-1411 (Supp. 1989). Other persons not signatory to this Agreement may file objections.

- 10.2 At the time the Director submits this Agreement and the abstract of this Agreement to the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls, the State and the United States shall file a motion seeking approval of the water rights in the Agreement as a decree in the SRBA. The parties agree to jointly support and defend this Agreement against any and all objections or other challenges that may arise in any phase of the Adjudication, including any appeals, and in securing any necessary ratification of this Agreement.
- 10.3 The United States' and Tribal water rights confirmed in this Agreement shall be final and conclusive as to all parties to the Adjudication once the Agreement becomes effective as provided in Article 18.
- 10.4 The Tribal water rights recognized in Article 7 are in full satisfaction of all water rights or claims to water rights of the Tribes, its members, and its allottees within the Upper Snake River basin. If a member or an allottee is decreed a water right for Indian lands, then a corresponding reduction will be made in the Tribal water rights set forth in Article 7. This Agreement does not apply to state water right claims of Tribal members for non-Indian lands.

ARTICLE 11. DISCLAIMERS AND GENERAL PROVISIONS

- 11.1 Nothing in this Agreement shall be so construed or interpreted:

- .1 To establish any standard to be used for the quantification of federal reserved water rights or any other Indian water claims of any other Indian Tribes in any judicial or administrative proceeding;
- .2 To restrict the acquisition or exercise of an appropriative right to the use of water under state law for present Tribal or allotted lands, provided the Tribal water rights confirmed in this Agreement have been fully utilized at the time the application is made, or are not physically available for use through reasonable diversion facilities;
- .3 To restrict the power of the United States to reserve, or of the United States or the Tribes to acquire water rights in the future, in accordance with this Agreement and other applicable law;
- .4 To limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;
- .5 To limit the authority of the United States or the Tribes to administer their respective water rights in accordance with the constitution, statutes, regulations, and procedures of the United States or of the Tribes except as expressly provided herein;
- .6 To restrict, enlarge, or otherwise determine the subject matter jurisdiction of any state, tribal or federal court;

- .7 To commit or obligate the United States, the State, or the Tribes to expend funds which have not been appropriated and budgeted;
- .8 To quantify or otherwise determine Walton Right claims that may be made in the SRBA;
- .9 To impair or impede the exercise of any Treaty rights reserved for members of the Tribe pursuant to Article 4 of the Second Fort Bridger Treaty of July 3, 1868, 15 Stat. 673;
- .10 To waive or prejudice any contention by any party to this Agreement regarding the location and extent of the Reservation's northern and western boundaries along or within the Snake River and the Blackfoot River, as well as the ownership of the beds and banks of those rivers to the ordinary high water mark;
- .11 To preclude the Tribes from participating in future water storage projects in the Upper Snake River basin;
- .12 To quantify or otherwise determine any water right claims of the City of Pocatello under the Act of September 1, 1888, ch. 936, § 10, 25 Stat. 452 or the sources from which such claims may be satisfied, provided that in the event the City of Pocatello is determined to be entitled to such a right, such right shall be in addition to the Tribal water rights set forth in this Agreement;
- .13 To quantify or otherwise determine any water right claims of the Northwestern Band of Shoshone, if any;

- .14 To waive any applicable federal environmental law;
- .15 To impair or impede the exercise of any civil or regulatory authority of the Tribes, the State, or the United States; and
- .16 To quantify or otherwise determine any water right claims for the United States that are not quantified in this Agreement.

11.2 This Agreement represents a settlement of federal reserved water right claims of the Tribes under the Winters Doctrine that are unique to the Reservation. The parties are unable to agree on whether the reserved water rights doctrine extends to ground water. In order to avoid litigation, however, this Agreement recognizes federal reserved water rights to groundwater for the Tribes as described in Article 7. Because this Agreement is a resolution of a disputed claim, it is not and shall not be used as precedent for any other federal reserved water right claim.

11.3 This Agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding.

11.4 Entry of judgment as set forth above has been consented to by the parties without trial or adjudication of fact or law herein and without the judgment constituting evidence or an admission by any party, with respect to any issue.

- 11.5 The Tribes and the United States reserve the right to assert federal reserved water right claims for instream flows in the Salmon River basin, the Clearwater River basin, and the Snake River basin below Hells Canyon Dam; however, no such instream flow claims made by the Tribes or the United States on behalf of the Tribes below Hells Canyon Dam shall require water to be supplied from above Hells Canyon Dam to satisfy such claims. All parties to this Agreement agree to engage in good faith negotiations in an attempt to settle these remaining claims.
- 11.6 The Tribes reserve the right to develop geothermal ground water on the Reservation having a temperature of at least two hundred twelve (212) degrees Fahrenheit in the bottom of a well.
- 11.7 Performance by the United States of the actions required by this Agreement, including the Congressional authorization and appropriation of any funds for deposit in the Tribal Development Fund described in Article 13 shall be conditioned on the Tribes executing a waiver and release of any and all existing claims against the United States arising in whole or in part from or concerning water rights finally settled by this Agreement, and for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir.
- 11.8 None of the parties will assert any claim against another party arising out of the negotiation of this Agreement or the entry by the Fifth Judicial District Court of the State

of Idaho in and for the County of Twin Falls of a decree embodying the water rights listed in this Agreement.

11.9 The United States, in its trust capacity for the Tribes only, and the Tribes agree not to object to water right claims filed by non-federal water users within the Upper Snake River basin in the SRBA that have no potential impact on the Tribal water rights set forth in this Agreement.

11.10 The United States and the Tribes agree not to make any claims against, or seek compensation from, any non-federal party to this Agreement for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir.

ARTICLE 12. PROTECTION OF EXISTING USES

12.1 Nothing in this Agreement alters the water right priorities as established by Section 3(b) of the Michaud Act, or Article 15 of the Michaud Contract, which the United States and/or the Tribes entered into as part of the authorization of the Michaud Division.

12.2 The Secretary shall continue to provide all project water users within the Fort Hall Indian Irrigation Project their project water entitlements pursuant to their project contracts.

12.3 The United States agrees to seek legislation authorizing the Secretary to contract with the Idaho Water Resource Board or another appropriate contracting entity acceptable to the Committee of Nine for the 80,500 acre feet of noncontracted storage space in Ririe Reservoir and the

18,980 acre feet of noncontracted storage space in Palisades Reservoir, provided that such entity makes application for the space within one year of the date such legislation becomes law. This space is estimated to provide on average approximately 45,000 AFY. The legislation shall provide for forgiveness of the repayment obligation associated with the construction cost for the noncontracted storage space; provided the contracting entity shall be responsible for operation and maintenance costs associated with this storage space.

- 12.4 The parties agree not to unreasonably oppose the efforts of any party to further mitigate the effects of the implementation of this Agreement on existing water users.

ARTICLE 13. CONTRIBUTIONS TO SETTLEMENT

- 13.1 The United States agrees to seek appropriations to continue to acquire up to 9,000 acres of land and grazing rights at Grays Lake, at a cost not to exceed \$5,000,000, for the acquisition of lands, grazing rights and related improvements to enhance the operation and management of the Fort Hall Indian Irrigation Project, particularly through increased storage capacity and retention period of the reservoir, and the operation of the United States Fish and Wildlife Service refuge at Grays Lake.
- 13.2 The United States agrees to assist the Tribes in implementing a Tribal water management system for the Reservation. The total cost of this federal assistance to the Tribes for this Tribal water management system shall

not exceed \$7,000,000. The United States agrees to seek appropriations of the \$7,000,000 as follows:

.1 \$2,000,000 in the first fiscal year following the effective date of this Agreement as set forth in Article 18, and

.2 an additional \$5,000,000 payable over a twenty-year (20-year) period.

13.3 The United States agrees to seek an appropriation of \$10,000,000 for a Tribal Development Fund payable in equal amounts of \$2,000,000 each fiscal year for each of the five (5) years following the effective date of this Agreement as set forth in Article 18. Under no circumstances shall these funds be distributed on a per capita basis to members of the Tribes.

13.4 Federal financial contributions to this settlement will be budgeted for, subject to the availability of funds, by October 1 of the year following the year of enactment of the authorizing legislation described in Article 18.

13.5 The state will seek an authorization to provide \$250,000 of in kind services to assist the Tribes in implementing this Agreement and will seek an appropriation of the monies necessary to pay the filing fees for the Tribes and the United States claims quantified as a part of this Agreement. These fees are estimated to be \$250,000.

ARTICLE 14. SUCCESSORS

This Agreement shall bind and inure to the benefit of the respective successors of the parties.

ARTICLE 15. ENTIRE AGREEMENT

15.1 This Agreement sets forth all understandings between the parties with respect to water rights and claims to water rights for the Tribes, its members, and its allottees in the Upper Snake River basin. There are no other understandings--no covenants, promises, agreements, conditions, either oral or written--between the parties other than those contained herein. The parties expressly reserve all rights not granted, recognized or settled by this Agreement.

15.2 Ratification of the water rights set forth in Article 7 is irrevocable; however, the balance of this Agreement may be modified only upon the joint consent of the legislative bodies of the Tribes and the State, and to the extent an interest of the United States may be affected, the Secretary or the United States Attorney General, as appropriate.

ARTICLE 16. EFFECT OF HEADINGS

Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.

ARTICLE 17. MULTIPLE ORIGINALS

This Agreement is executed in quintuplicate. Each of the five (5) agreements with an original signature of each party shall be an original.

ARTICLE 18. EFFECTIVE DATE

18.1 This Agreement shall be effective only when all of the following events have occurred:

- .1 This Agreement is executed;
- .2 A decree acceptable to the parties quantifying the water rights in this Agreement and the water rights of the United States for the Fort Hall Indian Irrigation Project and for the Bureau of Indian Affairs Fort Hall Agency has been entered by the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls and become final and nonappealable;
- .3 Adoption by the Idaho Water Resource Board of the Shoshone-Bannock Water Bank Rules and Regulations consistent with Article 7.3;
- .4 All federal and state expenditures required by this Agreement have been authorized;
- .5 Ratification of this Agreement by the Legislature of the State of Idaho;
- .6 Approval of the Agreement by the general membership of the Shoshone-Bannock Tribes;
- .7 The Bureau of Reclamation has entered into a storage contract with the Idaho Water Resource Board or a designee of the Committee of Nine in accordance with Article 12.3; and
- .8 Congressional approval of this Agreement.

The parties have executed this Agreement on the date following their respective signatures.

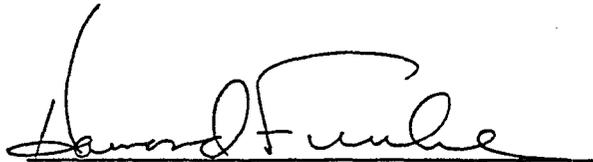

CÉCIL ANDRUS
Governor, State of Idaho


KESLEY EDMO
Chairman, Shoshone-Bannock
Tribal Council

7-5-90
Date

7/5/90
Date


GENE M. GRAY
Chairman,
Idaho Water Resource Board


HOWARD FUNKE
Tribal Attorney
Shoshone-Bannock Tribes

7-5-90
Date

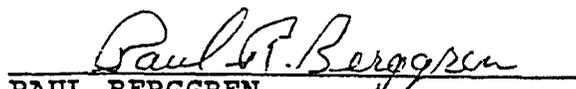
7/5/90
Date


CLIVE J. STRONG for GIM JONES
Attorney General,
State of Idaho


DR. EDDIE F. BROWN
Assistant Secretary for
Indian Affairs

7/5/90
Date

7-10-90
Date


PAUL BERGGREN
Chairman
Committee of Nine


RICHARD B. STEWART
Assistant Attorney General
for Land and Natural Resources
Division
U.S. Department of Justice

7/9/90
Date

7/10/90
Date

PL 101–602, November 16, 1990, 104 Stat 3059

UNITED STATES PUBLIC LAWS
101st Congress - Second Session
Convening January 23, 1990

Additions and Deletions are not identified in this document.

PL 101–602 (HR 5308)
November 16, 1990
FORT HALL INDIAN WATER RIGHTS ACT OF 1990

An Act to approve the Fort Hall Indian Water Rights Settlement, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fort Hall Indian Water Rights Act of 1990”.

SEC. 2. DEFINITIONS.

For the purposes of this Act, and for no other purposes—

- (1) The term “Agreement” means the “1990 Fort Hall Indian Water Rights Agreement” between the State of Idaho, the Shoshone–Bannock Tribes, the United States, and other participating parties.
- (2) The term “Committee of Nine” means the advisory committee of water district 01, which is the instrumentality created by the Director of the Idaho Department of Water Resources pursuant to Idaho Code 42–604.
- (3) The term “Final Decree” means the partial decree confirming the Tribal water rights described and quantified in Article 7 of the Agreement to be entered after the date of enactment of this Act and following submission of the Agreement as provided for in Article 10 of the Agreement in Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled *In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System*.
- (4) The term “Fort Hall Indian Irrigation Project” means the Federal project constructed to provide water for the irrigation of Reservation lands and certain ceded lands.
- (5) The term “Idaho Water Resource Board” means the Idaho State Water Resource Agency constituted in accordance with Idaho Constitution article XV, section 7, or any successor agency.
- (6) The term “Indian” means any person who is a member of a tribe recognized as eligible for special programs and services provided by the United States because of the person's status as an Indian; is recognized as an Indian under tribal law; or holds or is recognized by the Secretary as eligible to hold restricted trust property on the Reservation.
- (7) The term “Indian lands” means (A) all lands within the exterior boundaries of the Reservation that are held in trust or owned for the Shoshone–Bannock Tribes or an Indian, and (B) those lands outside the exterior boundaries of the Reservation held in trust for or owned by the Shoshone–Bannock Tribes or held in trust for or owned subject to a restriction on alienation by a member of the Shoshone–Bannock Tribes.
- (8) The term “Michaud Act” means the Act of August 31, 1954, chapter 1159, 68 Stat. 1026.
- (9) The term “Michaud Contract” means that Memorandum Agreement of April 25, 1957, between the Bureau of Reclamation and the Bureau of Indian Affairs relating to the water supply for the Michaud Division.
- (10) The term “Michaud Division” means that division of the Fort Hall Indian Irrigation Project authorized by the Act of August 31, 1954, chapter 1159, 68 Stat. 1026.
- (11) The term “Party” or “Parties” means any entity or entities that are party to the Agreement.
- (12) The term “Reservation” means the Fort Hall Indian Reservation.

(13) The term “Secretary” means the Secretary of the Interior.

(14) The term “Tribes” or “Tribal” means the Shoshone–Bannock Tribes, its members, and its allottees.

(15) The term “Upper Snake River Basin” means that portion of the Snake River Basin upstream from the Hells Canyon Dam, the lowest of the 3 dams authorized as FERC Project No. 1971.

SEC. 3. FINDINGS.

The purpose of the Fort Hall Indian Water Rights Settlement Act of 1990 is to achieve a fair, equitable, and final settlement of all claims of the Shoshone–Bannock Tribes, its members, and its allottees and the United States on behalf of the Shoshone–Bannock Tribes, its members, and its allottees to water rights in the Upper Snake River Basin.

SEC. 4. RATIFICATION OF AGREEMENT.

The Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to implement the Agreement on behalf of the United States.

SEC. 5. PROTECTION OF EXISTING USES.

(a) **CONTRACT FOR STORAGE SPACE.**—The Secretary is authorized and directed to contract with the Idaho Water Resource Board or another appropriate contracting entity acceptable to the Committee of Nine for 18,900 acre feet of storage space in the Palisades Reservoir and the 80,500 acre feet of storage space in the Ririe Reservoir provided that the contracting entity makes application for the noncontracted storage space within 1 year of the date of this Act and the contracting party agrees to pay all operation and maintenance costs associated with the space. The repayment obligation associated with the construction costs for such noncontracted storage space is hereby deemed repaid by this Act. All exemptions that result from such a repayment shall be deemed to be applicable without further qualification on the part of such contracting entity, and with respect to subsequent users of this water, the Reclamation laws shall apply only to the extent such laws would have applied to such subsequent users prior to the date of this Act.

(b) **LIMITATION ON SETTING ASIDE FINAL DECREE.**—Neither the Committee of Nine nor the State shall have the right to set aside the Final Decree because either fails to make application for the storage space referred to in subsection (a) of this section within 1 year of the date of this Act.

SEC. 6. USE, TRANSFER, AND LEASE OF TRIBAL WATER RIGHTS.

(a) **TRANSFER AND LEASE OF TRIBAL WATER RIGHTS WITHIN THE RESERVATION.**—The Tribes shall have the right to transfer or lease within the Reservation all or any part of the Tribal water right confirmed in the Final Decree on the terms and conditions set forth in article 7 of the Agreement.

(b) **RENTAL OF THE TRIBES FEDERAL CONTRACT STORAGE WATER.**—The Tribes shall have the right to rent, pursuant to Idaho Code 42-1761 through 42-1765 as specified in article 7 of the Agreement, the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act.

(c) **INSTREAM FLOWS.**—The Tribes shall have the right to use any or all of the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act for instream flows for river reaches on or adjacent to the Reservation and up to 15,000 acre feet per year of the storage water rights described in articles 7.1.19 and 7.1.20 of the Agreement for instream flows in reaches of the Blackfoot River on the terms and conditions set forth in article 7.4 of the Agreement.

(d) **REQUISITE CONGRESSIONAL APPROVAL.**—Ratification of the Agreement as provided for by section 4 of this Act shall constitute the congressional approval, to the extent it is required by Federal law, of the uses described in subsections (a), (b), and (c) of this section.

(e) **AMENDMENT OF MICHAUD ACT AND CONTRACT.**—The Michaud Act and the Michaud Contract are hereby amended to the extent necessary to authorize the uses described in subsections (a), (b), and (c) of the proprietary rights described in article 7 of the Agreement.

(f) **NO ALIENATION OR TAXATION OF PROCEEDS.**—The proceeds from leasing water pursuant to subsection (a) of this section or from renting all or any part of the water accruing to the Federal contract storage space pursuant to subsection (b) of this section shall not be subject to any form of taxation or alienation by the State.

(g) **NO FORFEITURE, ABANDONMENT, LOSS, OR CONSTRAINTS ON INCOME.**—The Tribes' exercise of the rights described in subsections (a), (b), and (c) of this section or nonuse of the Tribal water rights shall in no event be construed or interpreted as any forfeiture, abandonment, relinquishment, or other loss of all or any part of the Tribal water rights. Nor shall the exercise of the rights described in subsections (a) and (b) of this section be subject to any constraints on the amount of income or other compensation received by the Tribes.

(h) **LIMITATION ON OFF-RESERVATION USE.**—Except as authorized by this section, no Tribal water rights or water described in the Agreement may be sold, leased, rented, transferred, or otherwise used off the Fort Hall Indian Reservation.

SEC. 7. CONTRIBUTION TO SETTLEMENT.

(a) **TRIBAL DEVELOPMENT FUND.**—There are hereby authorized to be appropriated to the Department of the Interior Bureau of Indian Affairs \$4,000,000 in the first fiscal year, \$3,000,000 in the second fiscal year, and \$3,000,000 in the third fiscal year following the effective date of this Act for payment to the Tribal Development Fund, which the Secretary is authorized and directed to establish for the Shoshone-Bannock Tribes. Within 60 days of appropriation of moneys for the Tribal Development Fund, the Secretary shall allocate and make payment to the Fund. Once the funds are deposited into the Tribal Development Fund, the Secretary shall disburse the funds to the Tribes upon request.

(b) **RESERVATION WATER MANAGEMENT SYSTEM.**—There is hereby authorized to be appropriated to the Department of the Interior Bureau of Indian Affairs the sum of \$3,000,000 in the first fiscal year, \$2,000,000 in the second fiscal year, and \$2,000,000 in the third fiscal year following the effective date of this Act for use by the Tribes for development of a Reservation water management system. Within 60 days of appropriation of moneys for the Reservation water management system, the Secretary shall allocate and make payment to the Tribes for the purposes described in this section.

(c) **ACQUISITION OF LANDS, GRAZING RIGHTS, AND IMPROVEMENTS.**—There are hereby authorized to be appropriated to the Department of the Interior Bureau of Indian Affairs \$5,000,000 for the primary purposes of acquiring for the Fort Hall Indian Irrigation Project available lands and grazing rights adjacent to Grays Lake to enhance the operation and management of the project and of making related improvements as well as providing collateral benefits for the operation of the Fish and Wildlife Service Refuge at Grays Lake.

(d) **LIMITATION ON PER CAPITA DISTRIBUTIONS.**—Under no circumstances may any appropriated funds authorized by subsections (a), (b), and (c) of this section be distributed on a per capita basis to members of the Tribes.

(e) **LIMITATION ON SETTING ASIDE FINAL DECREE.**—Neither the Tribes nor the United States shall have the right to set aside the Final Decree because Congress fails to appropriate the funds authorized by subsection (a), (b), or (c) of this section or because the United States fails to acquire the grazing allotments adjacent to Grays Lake.

(f) **TRUST RESPONSIBILITY.**—Nothing in this Act shall be construed or interpreted to alter the future trust responsibility of the United States to the Tribes nor to prohibit the Tribes from seeking additional authorization or appropriation of funds for Tribal programs or purposes.

SEC. 8. WAIVER OF CLAIMS.

(a) **GENERAL AUTHORITY.**—Upon the effective date of the Agreement, the Tribes and the United States shall be deemed to have waived and released any and all water rights or claims to water rights of the Tribes, its members and its allottees from any source within the Upper Snake River Basin other than those set forth in article 7 of the Agreement. This release shall not apply to water right claims under State law of Tribal members for lands not defined as Indian lands for purposes of this Act nor to any other Indian tribe or to any Federal agency other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

(b) **WAIVER OF CLAIMS AGAINST THE UNITED STATES.**—In consideration of performance by the United States of all actions required by the Agreement and this Act, including the congressional authorization, appropriation, and payment of all funds authorized in section 7 of this Act, the Tribes shall be deemed to have executed in return a waiver and release of any and all existing claims against the United States arising in whole or in part from or concerning water rights finally settled by the Agreement and for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir.

(c) WAIVER OF CLAIMS AGAINST NON-FEDERAL PERSONS.—Upon entry of the Final Decree confirming the Tribal water rights, the United States and the Tribes agree not to make any claims against, or seek compensation from, any non-Federal person for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir. In the event funds are not paid as set forth in section 7, the Tribes are authorized to bring an action in the United States Claims Court for such funds plus applicable interest. The United States hereby waives any defense of sovereign immunity to such action.

SEC. 9. INDIVIDUAL MEMBERS AND ALLOTTEES OF THE TRIBES.

The water rights described in the Agreement and confirmed in the Final Decree are in full satisfaction of all water right claims of members of the Tribes and allottees for Indian lands in the Upper Snake River Basin. If any Tribal member or allottee is decreed a water right for Indian lands in Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled “In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System”, there shall be a corresponding reduction made in the Tribal water rights set forth in the Agreement and the Final Decree.

SEC. 10. EFFECTIVE DATE.

(a) DISBURSEMENT OF FUNDS UPON EFFECTIVE DATE.—The moneys appropriated pursuant to the authorization in section 7 of this Act shall not be disbursed until such time as the Agreement becomes effective. If the Agreement does not become effective, the moneys shall be returned to the General Fund of the Treasury, and the Agreement may be voided by any party to the Agreement.

(b) FORCE AND EFFECT.—No provision of this Act shall be of any force unless the Agreement becomes effective as provided by article 18 of the Agreement.

SEC. 11. DISCLAIMER.

(a) GENERAL DISCLAIMER.—Nothing in the Agreement or this Act shall be construed in any way to quantify or otherwise affect the water rights or water right claims of the city of Pocatello, Idaho, or of any Indian tribe, band, or community, other than the Shoshone-Bannock Tribes.

(b) RESERVATION OF TRIBAL CLAIMS.—Nothing in this Act shall be construed to waive any water rights or water right claims of the Tribe or the United States on behalf of the Tribes except as set forth in the Agreement. Nor shall anything in the Agreement or this Act affect the water rights or water right claims of any Federal agency, other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

(c) RESERVATION OF RIGHTS.—The parties expressly reserve all rights not granted, recognized, or settled by the Agreement or this Act.

(d) DISCLAIMER REGARDING OTHER AGREEMENTS.—Except as expressly provided in this Act, nothing herein shall be considered to amend, construe, supersede, or preempt any State law, Federal law, Tribal law, or interstate compact that pertains to the Snake River or its tributaries.

SEC. 12. PROTECTION OF TRIBAL WATER RIGHTS.

The Tribal water rights confirmed by the Final Decree shall bind and inure to the benefit of the Tribes and shall not be taken from them absent their consent and payment of just compensation.

Approved November 16, 1990

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of the court, fireman, judicial officer or prosecuting attorney who was acting in the lawful discharge of an official duty, and was known or should have been known by the perpetrator of the murder to be an officer so acting, shall be murder of the first degree.

(c) Any murder committed by a person under a sentence for murder of the first or second degree, including such persons on parole or probation from such sentence, shall be murder of the first degree.

(d) Any murder committed in the perpetration of, or attempt to perpetrate, aggravated battery on a child under twelve (12) years of age, arson, rape, robbery, burglary, kidnapping or mayhem is murder of the first degree.

(e) Any murder committed by a person incarcerated in a penal institution upon a person employed by the penal institution, another inmate of the penal institution or a visitor to the penal institution shall be murder of the first degree.

(f) Any murder committed by a person while escaping or attempting to escape from a penal institution is murder of the first degree.

(g) All other kinds of murder are of the second degree.

Approved April 2, 1991.

CHAPTER 228
(H.B. No. 258)

AN ACT

RELATING TO RATIFICATION OF THE FORT HALL INDIAN WATER RIGHTS AGREEMENT OF 1990 AND AUTHORIZATION FOR PAYMENT OF FILING FEES AND TO PROVIDE A CONTINGENCY IF THE AGREEMENT DOES NOT BECOME EFFECTIVE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. RATIFICATION OF FORT HALL INDIAN WATER RIGHTS AGREEMENT OF 1990. The 1990 Fort Hall Indian Water Rights Agreement executed by the Governor, the Attorney General and the Idaho Water Resource Board on July 5, 1990, and approved by the United States as Pub. L. No. 101-602, 104 Stat. 3059 (1990), is hereby approved, ratified and confirmed.

SECTION 2. AUTHORIZATION FOR PAYMENT OF FILING FEES. The Attorney General is hereby authorized to pay the filing fees required by the provisions of Section 42-1414, Idaho Code, for those water rights to be decreed as a part of the 1990 Fort Hall Indian Water Rights Agreement from the Attorney General's special litigation account upon approval of the Agreement by the general membership of the Shoshone-Bannock Tribes. In the event that the Agreement does not become effective as provided in Section 18 of the Agreement, any moneys paid pursuant to this section shall be refunded to the Attorney General's special litigation account.

Approved April 2, 1991.

RESOLUTION

WHEREAS, the Tribes, Idaho, United States and the Committee of Nine Water Users have been involved in water negotiations for the past five years to determine the nature and extent of the Tribes' water rights for the Fort Hall Indian Reservation; and

WHEREAS, the Committee of Nine Water Users approved the agreement in May, the Idaho Water Board approved it for Idaho on Thursday, June 14, and the Water Policy Board will vote on approval of the agreement on Tuesday, June 19, 1990; and

WHEREAS, all parties must sign the agreement to prevent the United States from being forced by the McCarran Amendment, to litigate the tribes' water rights before a state court judge, by signing the agreement the tribes will stay in control of the decisions concerning tribal water rights; and

WHEREAS, we need Senator McClure to assist us with approval of the agreement in Congress, McClure is a powerful senator who can get congress to approve the water rights agreement and the \$22 million development fund for the Tribes, as called for in the agreement; and

WHEREAS, McClure retires at the end of this year which makes it crucial we get the agreement into congress now to have it acted on while McClure is in power; and

WHEREAS, we still have a long way to go with this agreement; after the agreement is signed the Idaho Legislature, the United States Congress and the tribal membership will still have to approve it; and

WHEREAS, the last page of the agreement states that it can never become law or go into effect until it is approved by the tribes' general membership. Even if Congress approves the agreement, it doesn't become law unless tribal members vote it to become law, but if the members reject the agreement it is out the door; and

WHEREAS, after review of the agreement on the reservation the membership will have the ultimate say. Our last step will be to take the agreement to the Idaho court in Twin Falls for a court order approving the agreement; and

WHEREAS, by signing the agreement now we avoid state court control and get it into Congress in time. This will save the agreement so that over the next few months tribal members can review it, discuss it and be educated on it. Tribal members will then decide if they want the agreement. The agreement can't be forced on the Tribes. Only the membership can decide to accept it. No one else can make that decision; now

THEREFORE BE IT RESOLVED BY THE BUSINESS COUNCIL OF THE SHOSHONE-BANNOCK TRIBES, that the Chairman of the Business Council is

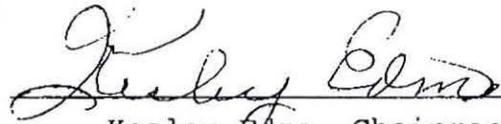
hereby authorized to sign the proposed water agreement on behalf of the Shoshone-Bannock Tribes; and

BE IT FURTHER RESOLVED, that the proposed water rights agreement begin the approval process through the Congress, Legislature and the Shoshone-Bannock Tribes' tribal membership.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended and under Article VI, Section I (a,c,l,q,r) of the Constitution and Bylaws of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho.

Dated this 15th day of June, 1990.

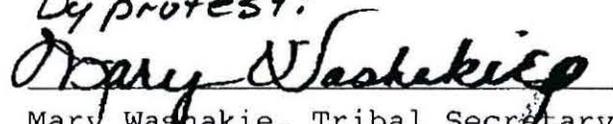
SEAL

Kesley Edmo, Chairman
Fort Hall Business Council

CERTIFICATION

I HEREBY CERTIFY that the foregoing resolution was passed while a quorum of the Business Council was present by a vote of 5 in favor, 1 opposed (MW), and 1 not voting (KE) on the date this bears.

By protest:


Mary Washakie, Tribal Secretary
Fort Hall Business Council

cc: Howard Funke, Tribal Attorney

RESOLUTION

BE IT RESOLVED BY THE BUSINESS COUNCIL OF THE SHOSHONE-BANNOCK TRIBES, that approval is hereby given for Kesley Edmo, Chairman of the Shoshone-Bannock Tribes to provide endorsement on behalf of the Tribe in regards to the 1990 Fort Hall Indian Water Rights Agreement (attached) between the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, the State of Idaho, the United States, and certain Idaho Water Users.

BE IT FURTHER RESOLVED, that this agreement shall be effective only when all of the following events have occurred:

1. This agreement is executed;
2. A decree acceptable to the parties quantifying the water rights in this agreement and the water rights of the United States for the Fort Hall Indian Irrigation Project and for the Bureau of Indian Affairs Fort Hall Agency has been entered by the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls and become final and nonappealable;
3. Adoption by the Idaho Water Resource Board of the Shoshone-Bannock Water Bank Rules and Regulations consistent with Article 7.3;
4. All federal and state expenditures required by this agreement have been authorized;
5. Ratification of this agreement by the Legislature of the State of Idaho;
6. Approval of the Agreement by the general membership of the Shoshone-Bannock Tribes;
7. The Bureau of Reclamation has entered into a storage contract with the Idaho Water Resource Board or a designee of the Committee of Nine in accordance with Article 12.3;
8. Congressional approval of this agreement.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat., 984) as amended and under Article VI, Section I (a, g, r) of the Shoshone-Bannock Tribes Constitution and By-laws of the Fort Hall Indian Reservation.

Dated this 05th day of July, 1990.

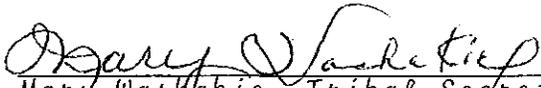


Kesley Edmo, Chairman
Fort Hall Business Council

S E A L

CERTIFICATION

I HEREBY CERTIFY, that the foregoing resolution was passed while a quorum of the Business Council was present by a vote of 4 in favor, 2 opposed (KT, MW), and 1 not voting (KE) on the date this bears.


Mary Washakie, Tribal Secretary
Fort Hall Business Council

WATR-90-0507

cc: Howard Funke, Tribal Attorney

RESOLUTION

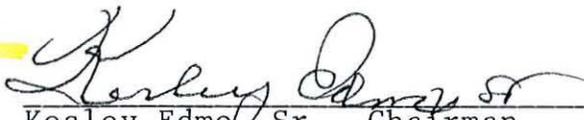
WHEREAS, certain of the Tribal membership have requested and the Business Council acting in accordance have scheduled June 14, 1991 - 9:00 a.m. as the date for a recount of the Tribal Water Agreement - Referendum Vote, and

WHEREAS, the Business Council have presided over a recount of the Tribal Water Agreement - Referendum Vote, which upon completion reflected no change from the May 31, 1991 tally sheet, now

THEREFORE, BE IT RESOLVED BY THE BUSINESS COUNCIL OF THE SHOSHONE-BANNOCK TRIBES, that certification of the recount - Tribal Water Agreement - Referendum Vote is hereby approved.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat., 984) as amended and under Article II, Section I (r) of the Shoshone-Bannock Tribes Constitution and By-laws of the Fort Hall Indian Reservation.

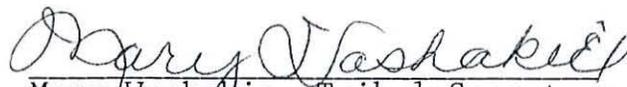
Dated this 14th day of June, 1991.


Kesley Edmo, Sr., Chairman
Fort Hall Business Council

S E A L

CERTIFICATION

I HEREBY CERTIFY, that the foregoing resolution was passed while a quorum of the Business Council was present by a vote of 4 in favor, 1 opposed (MW), 1 absent (KT), and 1 not voting (KE) on the date this bears.


Mary Washakie, Tribal Secretary
Fort Hall Business Council

GNCL-91-0512

cc: Darrell Shay, Tribal Election Board

**SHOSHONE-PAIUTE
SETTLEMENT**

DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
TWIN FALLS COUNTY, IDAHO
FILED _____

2002 DEC 12 PM 1:46

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)	
	)	Subcases 51-12767, et al. (See Attachment A)
	)	(US/Shoshone-Paiute Tribes – Decreed Rights)
)	
Case No. 39576	)	Subcases 51-12756, et al. (See Attachment B)
	)	(US/Shoshone-Paiute Tribes - Disallowed Claims)
)	
	)	Subcases 51-02002, et al. (See Attachment C)
	)	(Riddle Ranches/Jackson – Dismissal of Objections)
)	
	)	REVISED CONSENT DECREE APPROVING
	)	ENTRY OF PARTIAL DECREES DETERMINING
	)	THE RIGHTS OF THE UNITED STATES AS
	)	TRUSTEE FOR THE BENEFIT OF THE
	)	SHOSHONE-PAIUTE TRIBES TO THE USE OF
	)	WATER IN THE SNAKE RIVER BASIN WITHIN
	)	IDAHO

The Parties to this Consent Decree are the United States as trustee for the benefit of the Shoshone-Paiute Tribes, the State of Idaho, Riddle Ranches and J.R. Simplot Company, hereinafter collectively referred to as the "Parties":

1. Procedural History and Offer of Judgment. The United States as trustee for the benefit of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, hereinafter the "United States," filed a Notice of Claim To A Water Right Under Federal Law on February 4, 1998, hereinafter the "1998 Notice of Claim." The Idaho Department of Water Resources assigned a total of 363 claim numbers to the water right descriptions contained in the 1998 Notice of Claim. Later, the United States filed a Motion to Amend certain designated notices of claim, which split

two of the existing notices of claim into a total of six notices of claim. The Court granted the Motion to Amend.¹ Thus, the total number of notices of claim was 369.

The State of Idaho, J. R. Simplot Company and Riddle Ranch, hereinafter collectively referred to as the "Objectors," filed objections to the notices of claim filed by the United States.² The Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, hereinafter referred to as the "Tribes," filed a motion to intervene in those subcases filed by the United States on its behalf, and the Court granted the motion. In addition, the Tribes also filed a motion to participate in most of the notices of claim for the Riddle Ranch listed on Attachment C, which the Court also granted.

Pursuant to I.R.C.P. 68, the Objectors made an offer of judgment to the United States on October 13, 2005, which was clarified by several subsequent letters and an e-mail. The United States notified the Objectors in writing on November 15, 2005 that the United States conditionally accepted the offer of judgment.

2. Entry of Partial Final Decrees for federal reserved water rights. The Parties agree to entry of and incorporate herein the partial decrees for federal reserved water rights set forth in Attachment A for the beneficial use of the Shoshone-Paiute Tribes of the Duck Valley Indian

¹ The Court also added two claim numbers to allow parties to object to written narrative in the Director's Report. Five other discrepancies need to be noted. The Director's Report listed notice of claim number 51-12603 for a stockwater claim. This notice of claim number did not end up on the Court's list of notices of claim in Exhibits B and C to the Special Master's Report and Recommendation. The Director also had assigned notice of claim number 51-12603 to a stockwater claim for the U.S. Department of Interior, Bureau of Land Management, and the Court later entered a partial decree for that agency. Thus, the Director had inadvertently assigned notice of claim number 51-12603 to two separate water uses. Another problem existed. The first two digit number in a water right number denotes the hydrologic basin where the water is diverted. Notices of claim 51-12603 through 51-12607 were water uses in basin 55 and not Basin 51 as their number indicates. The Director filed on January 6, 2006 a Notice of Change of Subcase Numbers. This notice changed notice of claim numbers 51-12603 through 51-12607 for the United States as trustee for the benefit of the Shoshone-Paiute Tribes to notice of claim numbers 55-13603 through 55-13607. Notice of claim number 51-12603 remains assigned to a water use decreed for the U.S. Department of the Interior, Bureau of Land Management.

² The term "Riddle Ranch" refers to Riddle Ranch, Inc. and Nancy and Peter Jackson collectively.

Reservation within the Snake River Basin in the State of Idaho. As set forth in each of the partial decrees in Attachment A, these are federal reserved water rights, which are not subject to loss through non-use. These water rights describe purposes of use, points of diversion and places of use, which are not intended to preclude the Tribes' ability to change those purposes of use, points of diversion and places of use within the Duck Valley Indian Reservation pursuant to a tribal water code, provided however, that any change shall not enlarge the right.

3. Remaining water right claims disallowed. With the exception of the partial final decrees set forth in Attachment A, the Parties agree that the remaining claims asserted by the United States as trustee for the benefit of the Shoshone-Paiute Tribes in the SRBA within the State of Idaho will be decreed as disallowed. Attachment B provides a list of all claim numbers to be disallowed. These claims will be dismissed by a separate order issued contemporaneously herewith.

4. Withdrawal of United States' objections to Riddle Ranch. The objections of the United States to the notices of claim for the Riddle Ranch listed in Attachment C shall be withdrawn with prejudice. A separate order dismissing the objections with prejudice will be issued contemporaneously herewith.

5. Administration of water rights. The exercise of the water rights on the Duck Valley Indian Reservation outlined in the Final Partial Decrees set forth in Attachment A shall be administered by the Tribes pursuant to a tribal water code or in accordance with applicable federal law.

6. Waivers and releases. Except as provided in Attachment A, the United States, as trustee for the benefit of the Shoshone-Paiute Tribes, waive and release all existing claims for

water rights within the Snake River Basin in Idaho. No water right claims that the United States has asserted or may in the future assert on behalf of the Shoshone-Paiute Tribes outside the Snake River Basin in Idaho shall require water to be supplied from the Snake River Basin in Idaho to satisfy such claims. This Consent Decree is also in full satisfaction of all water rights or claims to water rights within the state of Idaho by the United States for the Bureau of Indian Affairs' Duck Valley Agency and the Duck Valley Indian Irrigation Project. Nothing in this Consent Decree shall preclude the United States or the Tribes from acquiring water rights in the future pursuant to state law, provided the water rights confirmed in this Consent Decree have been fully utilized at the time the application is made, or are not physically available for use through reasonable diversion facilities.

7. No establishment of precedent. Nothing in this Consent Decree shall be construed or interpreted to establish any standard to be used for the quantification of federal reserved water rights or any other Indian water claims of any other Indian Tribes in any judicial or administrative proceeding. This Consent Decree is the result of good faith negotiations between the Parties for the purpose of implementing the United States' conditional acceptance of the Objectors' offer of judgment regarding the United States' claims for the benefit of the Shoshone-Paiute Tribes. The Parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding and nothing in this Consent Decree shall be read as an admission or determination by the Parties that any of the actions anticipated by this Consent Decree are necessarily required under any federal or state law.

8. Resolution and Finality. The Parties agree that the Consent Decree and final partial decrees represent a just, fair, adequate and equitable resolution of the water right claims of the United States as trustee for the benefit of the Shoshone-Paiute Tribes in the SRBA within the State of Idaho.

9. Costs and Fees. The Parties will bear their own costs and fees with regard to the entry of the Consent Decree and all litigation relating to the water right claims submitted in the SRBA by the United States as trustee for the benefit of the Shoshone-Paiute Tribes.

IT IS SO ORDERED.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED December 12, 2006.



JOHN MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **REVISED CONSENT DECREE APPROVING ENTRY OF PARTIAL DECREES DETERMINING THE RIGHTS OF THE UNITED STATES AS TRUSTEE FOR THE BENEFIT OF THE SHOSHONE-PAIUTE TRIBES TO THE USE OF WATER IN THE SNAKE RIVER BASIN WITHIN IDAHO** were mailed on December 12, 2006, by first-class mail to the following:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Albert P. Barker
1010 W Jefferson, Ste 102
PO Box 2139
Boise, ID 83701-2139

Jeanne S Whiteing
Whiteing & Smith
1136 Pearl Street, Ste 203
Boulder, CO 80302

Ringert Clark Chartered
455 S Third St
PO Box 2773
Boise, ID 83701-2773

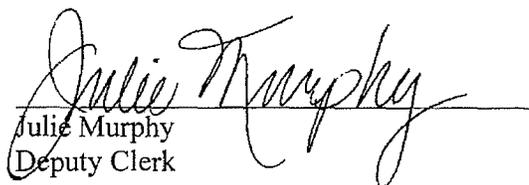
Jeanette Wolfley
Special Counsel
Shoshone-Bannock Tribes
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Pocatello, ID 83202

John K. Simpson
1010 W Jefferson, Ste 102
PO Box 2139
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Shelley M. Davis
1010 W Jefferson, Ste 102
PO Box 2139
Boise, ID 83701-2139

Terry T. Uhling
J. R. Simplot Company
999 Main St., 13th Floor
PO Box 27
Boise, ID 83707

Lawrence S. Roberts
United States Dept. of Justice
Environmental & Natural Resources Div.
550 W Fort Street, MSC 033
Boise, ID 83724


Julie Murphy
Deputy Clerk

ATTACHMENT A
REVISED CONSENT DECREE

United States of America, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation

Consumptive Claims

51-12767	51-12851	55-13495	55-13548	55-13585	55-13622
51-12768	51-12852	55-13496	55-13549	55-13586	55-13623
51-12769	51-12853	55-13506	55-13550	55-13587	55-13624
51-12770	51-12854	55-13508	55-13551	55-13588	55-13625
51-12771	51-12855	55-13512	55-13552	55-13589	55-13626
51-12772	51-12856	55-13514	55-13553	55-13590	55-13627
51-12773	51-12857	55-13515	55-13554	55-13591	55-13628
51-12774	51-12858	55-13518	55-13555	55-13592	55-13629
51-12775	51-12859	55-13519	55-13556	55-13593	55-13630
51-12776	51-12860	55-13520	55-13557	55-13594	55-13631
51-12777	51-12861	55-13521	55-13558	55-13595	55-13632
51-12778	51-12862	55-13522	55-13559	55-13596	55-13633
51-12779	51-12863	55-13523	55-13560	55-13597	55-13634
51-12780	51-12864	55-13524	55-13561	55-13598	55-13635
51-12781	51-12865	55-13525	55-13562	55-13599	55-13636
51-12782	51-12866	55-13526	55-13563	55-13600	55-13637
51-12783	51-12867	55-13527	55-13564	55-13601	55-13638
51-12784	51-12868	55-13528	55-13565	55-13602	55-13639
51-12785	51-12869	55-13529	55-13566	55-13603	55-13640
51-12786	51-12870	55-13530	55-13567	55-13604	55-13641
51-12787	51-12871	55-13531	55-13568	55-13605	55-13642
51-12788	51-12872	55-13532	55-13569	55-13606	55-13643
51-12789	51-12873	55-13533	55-13570	55-13607	55-13644
51-12790	51-12874	55-13534	55-13571	55-13608	55-13645
51-12791	51-12875	55-13535	55-13572	55-13609	55-13646
51-12792	51-12876	55-13536	55-13573	55-13610	55-13647
51-12793	51-12877	55-13537	55-13574	55-13611	55-13648
51-12794	51-12878	55-13538	55-13575	55-13612	55-13649
51-12795	51-12879	55-13539	55-13576	55-13613	55-13650
51-12796	51-12880	55-13540	55-13577	55-13614	55-13651
51-12797	51-12881	55-13541	55-13578	55-13615	55-13652
51-12798	51-12882	55-13542	55-13579	55-13616	55-13653
51-12799	51-12883	55-13543	55-13580	55-13617	55-13654
51-12800	-----	55-13544	55-13581	55-13618	55-13691
51-12801	55-13491	55-13545	55-13582	55-13619	55-13693
51-12802	55-13492	55-13546	55-13583	55-13620	55-13694
51-12803	55-13494	55-13547	55-13584	55-13621	55-13695

55-13697	55-13741	55-13785
55-13698	55-13742	55-13786
55-13699	55-13743	55-13787
55-13700	55-13744	55-13788
55-13701	55-13745	55-13789
55-13702	55-13746	55-13790
55-13703	55-13747	55-13791
55-13704	55-13748	55-13792
55-13705	55-13749	55-13793
55-13706	55-13750	55-13794
55-13707	55-13751	55-13795
55-13708	55-13752	55-13796
55-13709	55-13753	55-13797
55-13710	55-13754	55-13798
55-13711	55-13755	55-13799
55-13712	55-13756	55-13800
55-13713	55-13757	55-13801
55-13714	55-13758	55-13802
55-13715	55-13759	55-13803
55-13716	55-13760	55-13804
55-13717	55-13761	55-13805
55-13718	55-13762	55-13806
55-13719	55-13763	55-13807
55-13720	55-13764	55-13808
55-13721	55-13765	55-13809
55-13722	55-13766	55-13810
55-13723	55-13767	55-13811
55-13724	55-13768	55-13812
55-13725	55-13769	55-13813
55-13726	55-13770	55-13814
55-13727	55-13771	55-13815
55-13728	55-13772	55-13817
55-13729	55-13773	55-13818
55-13730	55-13774	55-13819
55-13731	55-13775	55-13820
55-13732	55-13776	
55-13733	55-13777	
55-13734	55-13778	
55-13735	55-13779	
55-13736	55-13780	
55-13737	55-13781	
55-13738	55-13782	
55-13739	55-13783	
55-13740	55-13784	

**United States of America, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck
Valley Indian Reservation**

Non-Consumptive, Instream Flow Claims

55-13487

NOTE: Water right claim number 55-13487 was originally a non-consumptive claim which under the offer of judgment was recognized as a consumptive claim.

**ATTACHMENT B
REVISED CONSENT DECREE**

Claims Decreed to be Disallowed

Claims filed by the:

Area Director, Portland Area Office
Department of Interior
Bureau of Indian Affairs
911 N.E. 11th Avenue
Portland, OR 97232

Claim Nos.

51-12756
51-12847
51-12848
51-12849
51-12850
55-13476
55-13477
55-13485
55-13486
55-13493
55-13499
55-13500
55-13501
55-13507
55-13509
55-13510
55-13511
55-13668
55-13669
55-13692
55-13696
55-13816

Additional Claims to be Disallowed:

Claim Nos.
51-12899
55-13822

**ATTACHMENT C
REVISED CONSENT DECREE**

Riddle Ranches, Inc. / Nancy and Peter Jackson

51-02002

51-10293

55-02009

55-02016

55-02032

55-02035

55-02039

55-02063

55-02064

55-02076

55-02080

55-02129

55-02131

55-02169

55-02174

55-02175

55-02181

55-02210

55-02211

55-02435

55-07002

55-07009

55-13479

55-13480

**NEZ PERCE
SETTLEMENT**

DISTRICT COURT - 1228
TWIN FALLS CO., IDAHO
FILED _____

2007 JAN 30 PM 3 51

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

In re SRBA
Case No. 39576

CONSENT DECREE APPROVING
ENTRY OF PARTIAL FINAL DECREES
DETERMINING THE RIGHTS OF THE
UNITED STATES AS TRUSTEE FOR
THE BENEFIT OF THE NEZ PERCE
TRIBE AND THE NEZ PERCE TRIBE
TO THE USE OF WATER IN THE
SNAKE RIVER BASIN WITHIN IDAHO
AND PARTIAL FINAL DECREES
DETERMINING MINIMUM STREAM
FLOW WATER RIGHTS HELD BY THE
IDAHO WATER RESOURCES BOARD

CONSENT DECREE

The Parties to this Consent Decree are the United States, the State of Idaho, the Nez Perce Tribe, and the Idaho Water Users listed on Attachment 1.

1. Definitions.

The following definitions apply for the purposes of this Consent Decree.

A. "Agreement" means the document titled "Mediator's Term Sheet", a copy of which is attached as Attachment 2, previously submitted to this Court on April 20, 2004, as an attachment to the Joint Status Report on Settlement Efforts and Motion for

Stay, and since ratified and confirmed by the Congress of the United States, the Idaho Legislature, and the Nez Perce Tribal Executive Committee.

B. "Partial Decrees" means the partial decrees for multiple use federal reserved water rights held by the United States as trustee for the benefit of the Nez Perce Tribe, "springs or fountains" federal reserved water rights held by the United States as trustee for the benefit of the Nez Perce Tribe, and state minimum stream flow water rights held by the Idaho Water Resources Board, all attached as Attachments 4 through 6.

2. General dismissal of all water right claims. With the exception of the partial decrees described herein, the Parties agree to the dismissal, with prejudice, of all water right claims submitted in the Snake River Basin Adjudication (SRBA) by the Nez Perce Tribe and by the United States as trustee for the benefit of the Nez Perce Tribe. Attachment 3 provides a list of all claim numbers to be dismissed and explains certain clerical corrections required for claim numbers.

3. Entry of Partial Decrees for multiple use federal reserved water rights.

The parties agree to entry of and incorporate herein the partial decrees for multiple use federal reserved water rights, attached hereto as Attachment 4, following compliance with the notice, objection, and hearing requirements of Section 42-1411A, Idaho Code. The United States and the Nez Perce Tribe will continue to exercise these water rights in a manner consistent with the expectation of the parties to the Agreement that most of the 50,000 acre feet per year will be diverted from the Clearwater River.

4. Entry of Partial Decrees for “springs or fountains” federal reserved water rights.

The parties agree to entry of and incorporate herein the partial decrees for “springs or fountains” federal reserved water rights, attached hereto as Attachment 5. Notices of claim were filed for each of the water rights described in the partial decrees and opportunity was provided for objections. The notices of claim and the objections thereto have been the subject of litigation in SRBA Consolidated Subcase 67-13701. Entry of the partial decrees and dismissal of all remaining claims pursuant to Section 2 of this Consent Decree would resolve the outstanding issues between the signatories¹ by confirming the federal reserved water rights of the United States as trustee for the benefit of the Nez Perce Tribe for the non-exclusive use of springs or fountains on federal public lands within the area ceded by the Nez Perce Tribe in the Nez Perce Treaty of June 9, 1863, 14 Stat. 647 and dismissing all claims to springs and fountains on private and state-owned lands.

5. Entry of Partial Decrees for state minimum stream flow water rights. The parties stipulate to the entry of the partial decrees for state minimum stream flow water rights, attached hereto as Attachment 6, following compliance with the notice, objection, and hearing requirements of Section 42-1411, Idaho Code. The minimum stream flow water rights were approved by resolution of the Idaho Water Resources Board dated February 8, 2005, and

¹ The following objectors in Consolidated Subcase 67-13701 are not signatories to this Consent Decree: Marilyn McKenna, Idaho Power Company, John W. Brewer, Willis D. Deveny, Scott and Connie Harris. However, we understand that Idaho Power Company does not oppose the entry of this Consent Decree, and the other parties objected only to those claims which were to springs on private land owned by the individual objectors, which claims are being dismissed pursuant to this Consent Decree.

established by the Idaho Legislature in chapter 148 of the 2005 Idaho Session Laws.² The water rights are held in the name of the Idaho Water Resources Board in trust for the people of the state of Idaho. The flows may be modified in accordance with chapter 148 of the 2005 Idaho Session Laws and Section II(A)(4) of the Agreement.

6. Administration of water rights. The United States will administer the multiple use federal reserved water rights set forth in this Consent Decree and the Partial Decrees until such time as the Nez Perce Tribe adopts a Nez Perce Tribe Water Code and such Code is approved by the Secretary of Interior pursuant to Section 7(b) of Title X of Division J of Public Law 108-447 (Snake River Water Rights Act of 2004). Administration of the multiple use water rights by the United States or the Nez Perce Tribe will not be construed or interpreted to preempt or inhibit administration of any state-based water right by the Idaho Department of Water Resources (IDWR) or the jurisdiction of the SRBA Court or its successor over the administration of the attached Partial Decrees.

7. Sharing of Water Use Information. In order to ensure compliance with this Consent Decree and to assure cooperation with regard to the administration of water rights, the Nez Perce Tribe and the State of Idaho will make available to each other a database of all diversions authorized pursuant to that party's authorities within the hydrologic subbasins identified in the attached Partial Decrees for federal reserved multiple use water rights. The

² Two minimum stream flows were inadvertently omitted from the resolution; the Water Board has filed applications 83-11962 and 83-11963 for the two omitted water rights. To fulfill the Agreement, these two omitted water rights are required to be decreed by the Court; it is expected the applications will be approved by the 2006 Legislature, after which recommendations will be filed in the SRBA for the two omitted water rights.

databases will include the following information: (1) the water right number or permit number under which the use will occur; (2) the source of water; (3) a legal description of the point of diversion; (4) a legal description of the place of use; (5) the amount of water to be diverted, stated in cubic feet per second and acre feet per year; and (6) the nature of the use. The databases will be updated as necessary to include new diversions, changes in points of diversion, and changes in places of use.

8. Implementation and Incorporation of Agreement. This Consent Decree implements the Agreement by decreeing the water rights as they were agreed to by the parties to the Agreement. This Consent Decree incorporates the Agreement; provided that nothing in the Agreement or this Consent Decree restricts, enlarges, or otherwise determines the subject matter jurisdiction of this Court or any other court, nor requires the enforcement by this Court of any matter outside of its jurisdiction. Many provisions in the Agreement are covenants among the signatory parties and are neither binding on, nor enforceable by, this Court or non-signatory parties. In the event of a conflict between the Agreement and the Consent Decree, the Consent Decree shall control.

9. Jurisdiction. Nothing in this Consent Decree, the Agreement, or the Partial Decrees shall be construed to restrict, enlarge, or otherwise determine the territorial or subject matter jurisdiction of any parties to the Agreement.

10. Waivers and Releases. At the time the Consent Decree shall be subject to no further appeal, and subject to the certification requirements of the Snake River Water Rights Act of 2004, Title X of Division J of Public Law 108-447; 2005 Idaho Session Laws Chapter 148,

and Nez Perce Tribal Executive Committee Resolution No. 05-210, the waivers and releases specified in Section IV(D)(1) of the Agreement shall become effective.

11. No Establishment of Precedent. Nothing in this Consent Decree or in the Agreement shall be so construed or interpreted: (1) to establish any standard to be used for the quantification of federal reserved water rights or any other Indian water claims of any other Indian Tribes in any judicial or administrative proceeding; (2) to limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Consent Decree or the Agreement; or (3) to enlarge, restrict, or in any way affect the Treaty hunting, fishing, gathering, or pasturing rights of the Nez Perce Tribe or any other Tribe. This Consent Decree and the Agreement were the result of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding and nothing in this Consent Decree or the Agreement shall be read as an admission or determination by the parties that any of the actions anticipated by this Consent Decree or the Agreement are necessarily required under any federal or state law.

12. Continuing Jurisdiction. The parties agree that the Court shall retain jurisdiction for the purpose of resolving disputes regarding the implementation and enforcement of this Consent Decree, as well as jurisdiction over the administration of the attached Partial Decrees, to the extent such administration is consistent with the terms of Title 42, Chapter 14, Idaho Code and the McCarran Amendment, 43 U.S.C. § 666.

13. Prior Orders and Judgments. Notwithstanding the status of previous orders, determinations, and judgments entered in Consolidated Subcase 03-10022 (Nez Perce Instream Flow Claims) and Consolidated Subcase 67-13701 (Nez Perce Springs or Fountains Claims), the parties agree that this Consent Decree and the Agreement constitute the final, complete and exclusive agreement and understanding of the parties and the final judgment of this Court as to all water right claims of the Nez Perce Tribe and the United States as trustee for the benefit of the Nez Perce Tribe in this Case.

14. Resolution and Finality. All parties agree that the Consent Decree and Agreement represent a just, fair, adequate and equitable resolution of the water right claims of the Nez Perce Tribe and the United States as trustee for the benefit of the Nez Perce Tribe in this Case and that the Consent Decree, Partial Decrees and Agreement constitute the final, complete and exclusive understanding of the parties and the final judgment of the Court with respect to all such claims.

15. Costs and Fees. All parties to this Consent Decree will bear their own costs and fees with regard to the entry of the Consent Decree and all litigation relating to the water right claims submitted in SRBA by the Nez Perce Tribe and the United States as trustee for the benefit of the Nez Perce Tribe.

16. Consent Decree Binding. The Consent Decree shall bind and inure to the benefit of the respective successors of the parties. Upon entry of the Consent Decree, the Consent Decree shall be binding on all parties in the SRBA.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATE: January 30, 2007



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

Attachment 1 to Consent Decree
In re SRBA Case No. 39576

The Idaho Water Users who are Parties to this Consent Decree include the following:

A & B Irrigation District	City of New Plymouth
Aberdeen-Springfield Canal Company	City of Oakley
Agland, Inc.	City of Parma
Agwild, Inc.	City of Paul
Bar-U-Inc.	City of Payette
Basic American Foods, Inc.	City of Pocatello
Big Bend Irrigation District	City of Rigby
Boise-Kuna Irrigation District	City of Ririe
Buck Creek Ranch, Inc.	City of Roberts
Burgess Canal & Irrigation Company	City of Rupert
Burley Irrigation District	City of Salmon
City of Ashton	City of St. Anthony
City of Bliss	City of Sugar City
City of Buhl	City of Ucon
City of Burley	City of Weiser
City of Cascade	ConAgra/Lamb-Weston, Inc.
City of Challis	Egin Bench Canal, Inc.
City of Chubbuck	Enterprise Irrigation District
City of Council	Falls Irrigation District
City of Declo	Glen Dale Farms, Inc.
City of Donnelly	Harrison Canal & Irrigation Company
City of Eden	Idaho Irrigation District
City of Emmett	J.R. Simplot Company
City of Fairfield	Lewiston Orchards Irrigation District
City of Fruitland	Little Salmon River Water Users Association
City of Garden City	M.L. Investment Company
City of Glenns Ferry	Milner Irrigation District
City of Grand View	Minidoka Irrigation District
City of Heyburn	New York Irrigation District
City of Inkom	Newfoundland Partners
City of Ketchum	North Freemont Canal Systems
City of Kuna	North Side Canal Company
City of Lewiston	Payette River Water Users Association, Inc.
City of Mackay	Peoples Canal & Irrigation District
City of Meridian	Pioneer Irrigation District
City of Middleton	Port of Lewiston
City of Minidoka	Potato Storage, Inc.
City of Mountain Home	Potlatch Corporation
City of Mud Lake	
City of Nampa	

Progressive Irrigation District
Settlers Irrigation District
Simplot Cattle Company
Simplot Dairy Products, Inc.
Simplot Livestock Company
Simplot Meat Products, Inc.
Sinclair Oil Corporation d/b/a Sun
Valley Company
Snake River Valley Irrigation District
SSI Food Services, Inc.
SSI Foods, Inc.
Sunnyslope Orchards Partnership
Thompson Creek Mining Company
Thousand Springs Ranch
TM Ranch Company
Twin Falls Canal Company
Wilder Irrigation District

Mediator's Term Sheet

April 20, 2004 Final Term Sheet

MEDIATOR'S TERM SHEET

I. Nez Perce Tribal Component.

- A. The Tribe's on-reservation, consumptive use reserved water right will be quantified in the amount of 50,000 AF per year, with a priority date of 1855. This water right will be established so as to allow for irrigation, DCMI, hatchery and cultural uses, at the discretion of the Tribe. The parties expect the source of most of this water right will be the Clearwater River; however, the source of some this water right may be from tributary streams adjacent to tribal lands to the extent unappropriated water is available and no injury to existing water rights will occur. The Tribe will administer the on-reservation use of this water right pursuant to the tribal water code. The Tribe may rent this water within the State of Idaho through the state water bank or water banks.
- B. The United States will establish a \$50 million multiple-use water and fisheries resource trust fund for the Tribe to use in acquiring lands and water rights, restoring/improving fish habitat, fish production, agricultural development, cultural preservation, and water resource development or fisheries-related projects.
- C. Subject to authority, the United States will enter into an agreement with the Tribe as to the use of 200 KAF in Dworshak Reservoir, which will include an operational MOA between the Tribe, Corps of Engineers (COE), National Marine Fisheries Service (NOAA Fisheries), the Bonneville Power Administration (BPA), and the State of Idaho implementing a flow augmentation plan beneficial to fish. Prior to the agreement implementing this term sheet,¹ the Tribe and the US will mutually agree that the power revenue effect of implementing this term will be either neutral or positive, or in the absence of such agreement, will revise this term so that such effect will be neutral or positive.
- D. The United States will fund the design and construction of domestic water supply and sewer systems for tribal communities on the reservation, including a water quality testing laboratory, in the total amount of \$23 million.
- E. The United States will enter into a long-term contract with the Tribe at the time of settlement, transferring management control of the federal hatchery at Kooskia to the Tribe. The United States and the Tribe will enter into an agreement for joint management of hatchery programs at the Dworshak National Hatchery.
- F. Prior to the completion of the agreement, the United States and the Tribe will agree to a quantity of BLM lands within the reservation to be transferred from the United States to the Tribe, to be selected by the Tribe from within the 11,000 acres identified as available for selection by the BLM, up to a total value of \$7 million as determined by mutual agreement or, in the absence of mutual agreement, by an independent appraisal report based upon the fair market value that is prepared in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP) and the *Uniform Appraisal Standards for Federal Land Acquisitions*. The BLM and the Tribe, under the authority of the Federal Land Policy and

¹Implementation of this Term Sheet will involve drafting of a number of implementation documents including federal and state legislation, a consent decree, biological assessments and opinions in accordance with the Endangered Species Act, and other documents. References in this Term Sheet to "agreements" refer to those implementation documents.

Mediator's Term Sheet

April 20, 2004 Final Term Sheet

- Management Act of 1976, will enter into a cooperative agreement to coordinate and cooperate in management of BLM lands within the reservation which will include a right of first refusal for the Tribe to purchase any BLM lands that the United States may choose in the future to sell, transfer, or exchange.
- G. Any non water-based claims the Tribe may have against the United States for the construction and operation of the Dworshak Dam will not be waived as a part of this agreement, nor will any compensation for such alleged claims be a part of the agreement. The United States understands that the Tribe intends to pursue such claims, moral or legal, separately from this agreement, and, without admitting any liability, agrees to meet in good faith with the Tribe to attempt to resolve such claims.
 - H. In lieu of contracting 45,000 AF of uncontracted storage space in the Payette River system to the Tribe, the United States will pay the Tribe the present value of \$10.1 million of the 30-year rental value of that space based on the rental charges set in section III.C.8.
 - I. The Tribe's treaty right of access to and use of water from springs and fountains on Federal public lands within the 1863 Nez Perce Treaty ceded area shall be recognized and established under the agreement.
 - J. Lewiston Orchards Irrigation District (LOID)/City of Lewiston. This term sheet does not address any of the issues surrounding the proposed transfer of the LOID/Bureau of Reclamation water diversion system to the Tribe or funding by the United States of a replacement water intake system on the Clearwater River for LOID. The intention of the parties is to allow any discussions that may take place in the future among LOID, the Tribe, the Bureau of Reclamation (BOR), the City of Lewiston, and other affected water right holders to occur separately from and unaffected by this term sheet.

II. Salmon/Clearwater Component

- A. **Instream Flows To Be Established As Part of Settlement of Nez Perce Claims.**
 - 1. Idaho will establish, pursuant to state law, instream flow water rights, to be held by the Idaho Water Resource Board (IWRB), on the streams within the Salmon and Clearwater Basins listed in Appendix I, List A in accordance with the protocol set forth as part of Appendix I. Such water rights will be established by March 31, 2005.
 - 2. By March 31, 2005, the IWRB will establish pursuant to state law instream flow water rights for the streams within the Salmon and Clearwater River Basins on the streams listed in Appendix I, List B, in amounts that are negotiated by the parties in consultation with local communities. In conjunction with the establishment of instream flows for the streams listed in Appendix I, List B, the parties will seek legislation from the Idaho Legislature to permit the IWRB to protect from diversion water to satisfy such instream flows, where needed, under state laws, regulations, and water bank rules. In negotiation of the quantification of instream flows, the parties will take into consideration the present hydrograph and the status of state-granted water rights on each stream.
 - 3. The instream flows will be subordinated to water rights existing on or before the date of this agreement and to future domestic, commercial, industrial and municipal water rights. In issuing any new water rights for future uses that may affect the instream flows, IDWR will consider the local public interest under Idaho Code § 42-203(A)5, including but not limited to the protection of fish and wildlife habitat, aquatic life,

Mediator's Term Sheet

April 20, 2004 Final Term Sheet

- recreation, aesthetic beauty, transportation and navigation values, and water quality.
 4. The SRBA court will decree the instream flows established by the IWRB on the streams listed in Appendix I, Lists A and B. In the event the State proposes to change any instream flow listed in Appendix I, Lists A and B, the State agrees to: 1) provide 6 months advanced written notice to the parties of any proposed change, including the basis for the proposed change and an analysis of the impacts, if any, resulting from the proposed change to fish and wildlife resources; and 2) to consult with the Nez Perce Tribe on a government-to-government basis prior to making the change.
 5. Federal reserved water rights for the Selway, Lochsa, Middle Fork Clearwater, Rapid River, Main Salmon and Middle Fork Salmon River will be decreed under the Wild and Scenic Rivers Act to the United States pursuant to a separate settlement in the SRBA.
 6. Existing state instream flows on the mainstem Clearwater, the mainstem Salmon, the Lemhi and the Pahsimeroi Rivers will be maintained as presently quantified, subject to I.C. § 42-1504.
 7. The parties will study the relationship of the IWRB instream flows on the Clearwater River with the potential future operations of Dworshak Reservoir including evaluations of the existing rule curve and proposed future integrated rule curves to provide for operation of Dworshak consistent with anadromous and resident fishery objectives, and other information as appropriate. The parties will complete the study by December 31, 2004.
 8. In the Lemhi and Pahsimeroi, additional habitat actions will be developed by the Parties in consultation with the local community and stakeholder groups in the course of developing the proposed Section 6 Cooperative Agreement (see Section II.D). The Parties' anticipation is the development of the actions will be specifically directed toward (1) assembling by March 31, 2005 sufficient agreement on actions to ensure settlement of the Nez Perce instream water right claims, and (2) maximizing the consistency between those actions and all provisions of any proposed Section 6 Cooperative Agreement that may relate to the Lemhi or Pahsimeroi basins.
 9. Enforcement. In accordance with Idaho Code Title 42, Chapter 6, or other applicable law, IDWR will regulate the delivery of the instream flow water rights and protect from diversion water to satisfy such instream flows through the designated stream reaches, subject to priority and to the subordinations specified in section II.A.3.
- B. **Salmon/Clearwater Habitat Management and Restoration Initiative.** The State of Idaho will implement a Salmon and Clearwater Habitat Management and Restoration Initiative for the conservation and restoration of habitat within the Salmon and Clearwater River Basins. The Initiative will consist of three components: 1) instream flow program, 2) forest practices program, and 3) a habitat restoration program.
1. Instream Flow Program.
 - a. The State will identify as part of the development of a Section 6 Cooperative Agreement(s) as provided for in Section II.D a list of streams for which it desires incidental take coverage. Within 60 days of this notice, the State will provide existing and expected future water depletions, including quantity and location (basin) for those streams that are to be included in the Section 6 Cooperative Agreement. Streams determined by the Services to be flow limited will be

Mediator's Term Sheet

April 20, 2004 Final Term Sheet

addressed in collaboration among the parties and local communities in order for the Section 6 Cooperative Agreement described in section II.D to satisfy the requirements of section 7(a)(2) of the ESA. Any state instream flows established under this section will not be decreed by the SRBA court nor will such instream flows be subject to the notice and consultation process described in section II.A.4 above.

- b. **Monitoring.** The parties will negotiate a monitoring plan and method for determining compliance with the instream flow program.
- c. **Enforcement.** IDWR will regulate the delivery of the instream flow water rights and protect from diversion water to satisfy such instream flows through the designated stream reaches, subject to priority and to the subordinations specified in section II.A.3 above.

2. **Idaho Forestry Program.** [Appendix II contains the figures and other references in this section.] Owners or operators who participate in the following State of Idaho Section 6 forest practices program will receive incidental take coverage under the ESA for any incidental take that may occur of listed species covered by this Agreement due to forest practices conducted in accordance with this Agreement. The forest practice program will be based on the Idaho Forest Practices Act ("IFPA"), Idaho Code §§ 38-1301 et seq. Owners and operators participating in the forest practices program voluntarily commit to implement the following prescriptions, in addition to the IFPA, to provide additional short-term and long-term conservation benefits for listed species. The Section 6 Agreement to be negotiated by the parties will not vary materially from the following terms, but may explain and define these terms, including establishment of standards relating to subsequent administrative decisions by the Idaho Department of Lands, as mutually agreed by the parties. This forestry program is a cooperative agreement between the State and the Services pursuant to Section 6(c) of the ESA, and neither applies to Nez Perce tribal lands nor impairs Nez Perce treaty fishing, hunting, pasturing, or gathering rights.

a. **DEFINITIONS:**

- i. **Bank Full Depth:** The average depth of the stream when the flow is at the ordinary high water mark. This is used to determine the average depth of the stream for the reach adjoining management activities.
- ii. **Class I Stream:** For purposes of this Agreement, Class I streams are those that contain habitat which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat. Where it is unknown whether the stream may contain fish, fish habitat or potential habitat, the current IFPA rules based on upstream drainage area will be used to determine the Class I-Class II boundary. The Class I-Class II boundary may be determined from other, analytically-based or empirical methods, as approved by the IDL.
- iii. **Class II Stream:** For purposes of this Agreement, Class II streams are headwater streams or minor drainages that do not contain habitat likely to be used by fish at any life stage at any time of the year. The principle value of Class II streams lies in their influence on ecological functions, water

Mediator's Term Sheet

April 20, 2004 Final Term Sheet

- quality and water quantity downstream in Class I streams.
- iv. Cumulative Watershed Effects Process (CWE): Forest Practices Cumulative Watershed Effects Process for Idaho, as amended.
- v. Distances: All distances referenced in these supplement measures are slope distances, unless otherwise provided herein.
- vi. Flood Prone Width: Flood prone width is defined as the width of the water's surface at twice the bank full depth.
- vii. Idaho Department of Lands (IDL): The administering agency of the IFPA.
- viii. Hot spot: (as defined in the Native Fish Habitat Conservation Plan (NFHCP)).
- ix. Large Woody Debris (LWD): Live or dead trees and parts or pieces of trees that are large enough or long enough or sufficiently buried in the stream bank or bed to be stable during high flows.
- x. Multiple Unconfined Channel: Valley bottom contains multiple (braided) channels that are active or relic.
- xi. Ordinary High Water Mark: That mark on all water courses in respect to vegetation, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland.
- xii. Riparian Protection Zone (RPZ): The combined widths of the no harvest and buffer zones defined in these measures.
- xiii. Single Confined Channel: Bank full flow is contained within a single channel and the flood prone width is less than four times the bank full channel width.
- xiv. Single Unconfined Channel: Bank full flow is contained within a single channel and the flood prone width is greater than four times the bank full channel width.
- xv. SPZ: Stream Protection Zone as defined in the IFPA.
- b. **RIPARIAN MANAGEMENT MEASURES**
 - i. Because of the diversity of terrain and forest types in Idaho, it is difficult to design a "one-size fits all" set of riparian management measures. Thus, while the supplemental measures set forth below are designed for application to all enrolled forest lands, the program to be included in the Section 6 Agreement will also provide a mechanism for enrollees to design site-specific stream protection measures that must be reviewed and approved by the IDL forest practices coordinator or designee and a fisheries biologist as appropriate prior to implementation. An approved site-specific stream protection plan shall provide for equivalent or better results than these supplemental conservation measures.
 - ii. **RIPARIAN MEASURES FOR CLASS I STREAMS.** -- On Class I streams the following measures shall apply to the RPZ.
 - (a) No Harvest Zone Measures
 - i) The No Harvest Zone is defined as:
 - a) Twenty-five (25) feet (each side) of the ordinary high

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- water mark where the stream is contained in a Single Confined Channel (Figures 1, 4).
 - b) Twenty-five (25) feet (each side) of the ordinary high water mark where the stream is contained in a Single Unconfined Channel (Figures 2, 5).
 - c) The entire flood prone width where the stream is contained in Multiple Unconfined Channels (Figures 3, 6). Where the current channel, or any relic channel is within 25 feet of the valley sidewall, the No Harvest Zone will be extended upslope twenty-five (25) feet from the ordinary high water mark of that channel.
 - ii) Harvest will not occur in the No Harvest Zone unless determined by the IDL, on a site-specific basis, that harvest is necessary to maintain or improve riparian function, which may include reduction of the risk of forest fires, disease, or insect infestation. An enrollee who believes harvest is necessary to maintain or improve riparian function must submit a site-specific plan for IDL review and approval prior to implementation. Such harvest plan must describe how riparian function will be protected.
 - iii) Yarding corridors will not be placed through the No Harvest Zone unless required to minimize road construction, for operator safety, or to achieve sound forestry practices in the adjacent area. Any such yarding corridor shall be placed in a No Harvest Zone only to the minimum extent necessary, and only as approved by the IDL forest practices coordinator or designee, with advice from a fisheries biologist as appropriate. Any approved plan authorizing a yarding corridor within the No Harvest Zone must still ensure the minimum stocking levels are retained within the RPZ. Yarding corridors that affect more than ten (10) percent of the RPZ will be mitigated as approved by IDL.
 - iv) When harvesting in areas adjacent to Class I streams, LWD may be added (through active placement of LWD) from the buffer zone, in accordance with an approved site-specific plan (II.B.2.b.i). This may alter the leave tree requirements.
 - (b) Buffer Zone Measures
 - i) The buffer zone is defined as:
 - a) Fifty (50) feet (each side) of the No Harvest Zone where the stream is contained in a Single Confined Channel (Figures 1, 4).
 - b) The entire flood prone width beyond the No Harvest Zone where the stream is contained in a Single Unconfined Channel (Figure 2, 5). Where the channel is within twenty-five (25) feet of the valley sidewall, the

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- buffer zone will be extended fifty (50) feet upslope of the No Harvest Zone.
- c) Where the stream is contained in Multiple Unconfined Channels, and the current channel, or any relic channel is within twenty-five (25) feet of the valley sidewall, the buffer zone will be extended fifty (50) feet upslope from the No Harvest Zone (Figures 3, 6).
- ii) During development of the section 6 agreement, the parties will work to evaluate the appropriateness of the LWD instream target and the leave trees per acre target and make revisions as mutually agreed. Absent such agreement, within the buffer zone an average of 88 trees per acre of trees larger than 8 inches diameter breast height (DBH) will be retained, selected as follows;
- a) Trees leaning toward the stream or flood plain will be favored for retention,
 - b) Trees retained will be lineally distributed along the length of the stream segment even though they may be concentrated closer to the stream,
 - c) Trees with the highest crown to height ratios (crowns from the tip to the ground) will be favored for retention to enhance stream shading,
 - d) Native species leave trees will be selected based on their suitability to survive and thrive in the RPZ.
 - e) All snags will be retained in the No Harvest Zone (where they do not interfere with logger safety), with no more than 9 snags to be included in the total tree count per acre. Snags must be over 10 feet tall to be included in the total tree count,
 - f) Trees less than 8 inches DBH and shrubs will be retained to the extent possible,
 - g) The diameter distribution of the live leave trees in the buffer zone will match a forest stand diameter distribution consistent with the age of the stand in its pre-harvest condition. The Parties envision that the section 6 agreement will include provisions that will encourage recruitment of large, older trees to the RPZ.
- iii) Because Idaho forest ecology varies tremendously from north to south, it may not be possible to maintain 88 trees per acre of trees larger than 8 inches DBH on all forest lands. Thus, in the event an enrollee demonstrates that the site productivity within the riparian zone cannot support an average of 88 trees per acre of trees larger than 8 inches DBH, then IDL will work with the enrollee(s) to determine an appropriate site-specific tree retention policy that ensures protection of riparian habitat. In

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- no event will the tree retention be less than 60 trees per acre of trees larger than 8 inches DBH.
- (c) Measures Applicable to Entire Riparian Zone
 - i) Operation of ground-based equipment shall not be allowed within the RPZ.
 - ii) The outer perimeter of the RPZ will be designated on the ground/trees prior to the commencement of logging activities.
 - iii. **RIPARIAN MEASURES FOR CLASS IIa STREAMS.** Class IIa streams are Class II streams that contribute surface stream flow directly into a Class I stream.
 - (a) There will be a fifty (50) foot buffer zone adjacent to the main stem of Class IIa streams. Within this zone a minimum of thirty-five (35) trees per acre larger than 8 inches DBH will be retained. This corresponds to an average thirty-five (35) foot spacing. Trees retained must be representative of the size of trees that existed in the stand prior to harvest.
 - (b) The buffer zone of perennial Class IIa streams that contribute, based on contributory acres, more than twenty (20) percent of the flow to a Class I stream will extend one-thousand (1000) feet above the confluence. Above this point, Class II SPZ requirements in the IFPA will apply.
 - (c) The buffer zone of perennial Class IIa streams that contribute, based on contributory acres, less than twenty (20) percent of a perennial Class I stream flow will extend five-hundred (500) feet above the confluence. Above this point, Class II SPZ requirements in the IFPA will apply.
 - (d) The riparian management of intermittent Class IIa streams will be covered by the IFPA Class II rules.
 - iv. Removal of LWD from Class I and Class IIa streams shall be prohibited unless necessary to maintain or improve riparian function, which may include reduction of the risk of forest fires, disease or insect infestation. A site-specific management plan approved by IDL will be required for the removal of any LWD prior to implementation.
 - v. As part of these Supplemental Measures, participating enrollees commit to mapping all stream segments on their ownerships as Class I and Class II within 15 years from the date of enrollment. Enrollees also agree to participate in any efforts by IDL, USFWS, NOAA Fisheries, and Idaho Department of Fish and Game to update mapping of stream segments on their ownerships.
 - vi. As part of these Supplemental Measures, the parties will cooperate in developing and undertaking a series of research projects designed to compare the effectiveness of these Supplemental Measures with alternative management strategies in enhancing native fish habitat and populations. These projects would include examples of active management within riparian areas.

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- c. **ROAD MANAGEMENT MEASURES.** The road management measures set forth herein will constitute the measures to be included in the Section 6 Agreement. Additional road measures may be included in the Section 6 Agreement only with the consent of all parties.
- i. New Road Construction:
- (a) An attempt will be made to find a suitable alternative location for new roads that are proposed for construction on side slopes greater than sixty (60) percent and/or in unstable or erodible soils. Unstable or erodible soils are those defined as "high" in the Idaho CWE Process for Idaho (Table B-1) or other agreed upon hazard-rating analysis process. Where an alternative location is not feasible, the road will be full benched without fill slope disposal.
 - (b) Where road grades slope toward stream crossings, the enrollee will install drivable drain dips and/or ditch relief pipes at the nearest practicable location to streams so that an adequate filtration zone exists to minimize sediment delivery to streams;
 - (c) Road fills over stream crossings will be grass seeded and straw-mulched concurrent with construction. Other road cuts and fills on newly constructed roads will be seeded within one operating season. The tread on native-surface roads will also be grass seeded within one operating season following construction unless the road will be used for hauling within two (2) years of construction;
 - (d) New road construction will be minimized in stream RPZs. If road construction occurs in an RPZ, slash filter windrows or suitable alternative measures will be installed at the toe of all fill slopes;
 - (e) Fills at culvert inlets on stream crossings where the culvert is 24-inch-diameter or larger will be well-armored with rock or other erosion control measures. A flared inlet structure may be used as an alternative;
 - (f) Stream crossing culvert installations will be designed to accommodate at least the fifty (50) year peak flow as determined by U.S. Geological Survey flood magnitude prediction procedures. As an alternative, the culvert size for a fifty (50) year flow may be calculated by an IDL hydrologist based on an analysis of channel dimensions;
 - (g) New roads will be minimized where the potential for erosion is high. If roads are built in an area where soils are identified in the CWE process surface erosion hazard ratings as high (Table B-2), the road tread over stream crossings will be rocked or otherwise stabilized to prevent sediment transport.
 - (h) Road cross-drainage will be provided as frequently as necessary to control road tread erosion. On active native-surfaced roads, road drainage features will be located such that road runoff distances generally do not exceed three-hundred (300) feet (and will not exceed four-hundred (400) feet) along the road centerline. On

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erodible soil types, or on road grades steeper than eight (8) percent, this spacing will be reduced from the specifications listed above; alternatively a localized IDL approved method to adequately control road tread erosion will be applied.

- (i) Road right of way clearings will be minimized where roads cross streams.
 - (j) Seeps or springs will be avoided during road design and construction, if possible. If roads cross seeps or springs, drainage features will be installed that pass accumulated surface water across the road prism and return it to the forest floor as close to the point of origin as reasonably practicable;
 - (k) New roads will be minimized in the RPZ. Roads located in RPZs will be constructed with appropriate fill depths and will include properly sized drainage features at all active channels;
 - (l) Stream crossing culvert installations must be designed to accommodate fish passage on Class I streams (an inspection program for culvert failures following significant hydrologic events will be negotiated as a part of the Section 6 agreement);
 - (m) The enrollee will inspect roads to determine their status and condition in comparison to these supplemental measures and results will be included in the periodic update of the road database.
 - (n) Road surface drainage will keep drainage within the source watershed.
- ii. Road Reconstruction and Upgrading:
- (a) A prioritization of road upgrades will be developed through CWE and/or an enrollee inventory of roads within five years of enrollment in this program. The prioritization schedule shall set forth a time frame for upgrading roads within fifteen years of the date of enrollment to the standards listed in the Supplemental Measures below. To the extent practicable, roads that have the potential to deliver sediment to Class I and Class II streams will receive priority for upgrading.
 - i) Within an operation area (Timber Sale) when the haul routes cross Class I streams, the Class I stream crossing culverts will be upgraded to meet the Supplemental Measures listed below no later than one year after completion of harvesting operations.
 - ii) For all roads, using the data from the CWE and/or enrollee inventory, enrollees will identify "hot spots." Hot spots will be addressed within five years from the date of identification. Hot spots will be upgraded to the standards in these Supplemental Measures when indicated by the CWE and/or enrollee inventory. An incentive program to encourage early response to hot spots will be included.

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- (b) Supplemental Measures for Reconstructing and Upgrading Existing Roads:
 - i) Road Tread Erosion—Within the RPZ of Class I streams, road cross-drainage will be provided as frequently as necessary to control road tread erosion. On active native-surfaced roads, road drainage features will be located such that road runoff distances generally do not exceed three hundred (300) feet (and will not exceed four-hundred (400) feet) along the road centerline. On highly erodible soil types, or on road grades steeper than eight (8) percent, this spacing will be reduced from the specifications listed above; alternatively, a localized method to adequately control road tread erosion from providing sediment to Class I streams will be applied. Procedures for alternative methods will be agreed upon.
 - ii) Culvert Replacement and Upgrading—Where existing stream crossing culverts do not pass the fifty (50) year flow, or where blockage of fish passage is documented, replacements will be designed and constructed to carry the fifty (50) year peak flow as determined by U.S. Geological Survey flood magnitude prediction procedures (as an alternative, the culvert size for a fifty (50) year flow may be calculated by a IDL hydrologist based on an analysis of channel dimensions and/or drainage size);
 - iii) Filtration—When the outlet of road drainage features are too close to streams for effective forest-floor filtration, supplemental sediment filtration will be provided (such as slash filter windrows, straw-bales, silt fences, etc.) and/or drainage feature spacing will be decreased to minimize sediment delivery;
 - iv) Relocation—For stream-adjacent/parallel roads or where there is a high density of stream crossings, simple/inexpensive relocation will be utilized in addition to (or in lieu of) road drainage improvements where possible.
- iii. Other Road Management. Site-specific access restriction commitments currently in place in cooperation with the Idaho Department of Fish and Game and/or other cooperators will be continued (and updated as necessary for new road construction and road abandonment) to protect riparian habitats and listed species.
- iv. Road Management Database
 - (a) The enrollee will commit to tracking the status of road conditions on enrolled lands. The methods for this will be either an updateable geographic information system (GIS), or a system of hand or computer aided drawing (CAD) maps, and tabular data suitable for periodic audits. It will show the road network spatially and facilitate estimation of road miles by road class. Additionally there is a

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- commitment to periodically (ten (10) year cycle) re-inspect roads that have been constructed or upgraded to the supplemental standards and to perform any maintenance necessary to preserve the upgraded function.
- (b) The inspection process will be performed using several methods including but not limited to: Forestry personnel reviewing roads for use in management activities, personnel knowledgeable about such road inspection, and through the Cumulative Watershed Effects Analysis (CWE) field review activities.
 - (c) The checklist for inspection will include all the elements necessary to ensure roadbed integrity, sediment management, and drainage structure function in regard to protecting streams.
- d. **VARIANCE COMMITMENTS.** All variances to these Supplemental Measures that affect fish habitat shall be reviewed by the IDL Forest Practices Coordinator or designee in consultation, as defined in the IFPA, with a fisheries biologist and approved and signed by the IDL Area Supervisor.
- e. **IMPLEMENTATION MONITORING.**
- i. IDL will monitor implementation and effectiveness of the IFPA and these additional conservation measures in protecting riparian function.
 - ii. Implementation Monitoring Plan. Each enrollee will be monitored separately within the program. Management Responses generated by the various methods listed below will be tailored to the landowner. Standards, criteria, and methods for implementation monitoring will be agreed upon.
 - (a) Three basic methods of implementation monitoring will occur to ensure the IFPA and these supplemental conservation measures are being applied on the ground. The first will be the routine on-site inspections carried out by IDL Forest Practice Advisors in the course of their work. These inspections are reviewed by staff and trends noted and reported on a yearly basis. The second is by periodic audits of management activities by an Interdisciplinary Team to review IFPA rule implementation and effectiveness. The third is by systematic implementation of CWE, which provides a framework to assess all the elements that may affect habitat and water quality, and provide a feedback loop for implementation of corrective measures and further assessment.
 - (b) For each of these methods, a report will be generated and sent to the landowner(s) with specific corrective action options presented and a timeframe in which the action is to be completed. An Interdisciplinary team will be available for consultation in reviewing the site if necessary and offering inputs on the corrective action.
 - i) Nonperformance issues documented in yearly reports may result in an increased rate of inspection and a revision of the enrollee's implementation plan.
 - ii) Nonperformance issues identified in periodic IFPA audits and CWE analyses will lead to adjusting inspection cycles and

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- iii) frequencies and reviews of enrollee's implementation plan.
- iii) It is the responsibility of the person seeking authorization for incidental take of listed fish to show that actions taken are in compliance with the Section 6 Agreement and the Idaho Forest Practices Act.
- f. **ADAPTIVE MANAGEMENT:** The parties will implement an adaptive management plan comparable in kind to that in the NFHCP, which will include among other things the following:
 - i. **Effectiveness Monitoring Plan:** All of the supplemental measures in this program are expected to benefit listed fish, however, some of the commitments provide more certain benefits than others. At present, the scientific information regarding the cause-and-effect relationships between some forest management activities and aquatic resource concerns are not well understood. Thus, methods by which adaptive management strategies will investigate scientific questions on the following issues will be identified:
 - (a) Evaluation of the effects of riparian management on woody debris loads and fish habitat diversity.
 - (b) Evaluation of effectiveness of supplemental measures at minimizing stream temperature increases.
 - (c) Evaluation of the sediment inputs, including the effectiveness of road measures.
 - ii. **Changed Circumstances.**
 - (a) A "changed circumstance" is a change in the circumstances affecting a covered species that can be reasonably anticipated to occur during the term of the agreement. Changed circumstances include, among others:
 - i) Forest fires that are stand replacement fires 300 acres and larger or that affect more than 25 percent of the stream length within the watershed. "Stand replacement" is of sufficient intensity to kill 90 percent or more of the trees (i.e., a fire that would necessarily result in the need to establish a new stand);
 - ii) Flooding when the flood has a recurrence interval greater than 25 years based on stream gauging station data in the watershed, for 4th order watersheds and above; and
 - iii) Landslides larger than 500 cubic yards that deliver sediment to streams.
 - (b) Promptly after a changed circumstance is discovered, IDL will be notified and invited to help craft a site-specific management alternative.
 - iii. **Evaluation and Response Plan:** Adaptive Management triggers, similar in kind to the NFHCP will be established utilizing the data from effectiveness monitoring projects, the annual and periodic reports on implementation monitoring, and independent research as applicable to watersheds covered by these Supplemental Measures. The basic response mechanism for

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instituting programmatic changes in these measures is as follows:

- (a) A trigger can be tripped by findings from any level of reporting (yearly, periodic IFPA, or CWE) or scientific study conducted as part of this program.
- (b) When a trigger is tripped, an assessment of the biological relevance of the findings between expectations and results will be performed and a determination made as to whether there is a causal linkage, or an unforeseen circumstance.
- (c) Depending on the determination above, a management response will be crafted to address the issue and enrollee implementation plans will be modified accordingly.

g. **ADMINISTRATION AND IMPLEMENTATION OF SECTION 6 PROGRAM**

- i. **IDL Administration:** IDL shall be responsible for administering and ensuring compliance with the Idaho Forestry Program.
- ii. **Enrollment and Commitment:** A landowner may enroll in this program by submitting a written request to IDL. IDL shall develop an enrollment form for use by landowners. The enrollment form shall require, at a minimum, that the enrollee:
 - (a) Identify all lands for which enrollment is sought;
 - (b) Agree to abide by the supplemental measures set forth in this program;
 - (c) Set forth a detailed schedule for implementation of the commitments required by these supplemental measures on the enrollee's forest lands;
 - (d) Authorize IDL access to the enrollee's land for purposes of monitoring compliance with this program;
 - (e) Provide IDL with an explanation of the landowners system for record keeping; and
 - (f) Provide a plan for how the enrollees' personnel will implement the supplemental measures and report actions to the landowner for compliance with these supplemental measures. This plan will include:
 - i) What internal auditing procedures will be used to check compliance with the supplemental measures;
 - ii) How hot-spot reporting and repair will be handled;
 - iii) How the schedule for tracking road condition and stream class will be accomplished; and
 - iv) Procedures for reporting changed circumstances.
- iii. **Noncompliance:** In the event that IDL determines that an enrollee is not in compliance with these supplemental measures, IDL shall work with the enrollee to cure any noncompliance or take action to revoke the enrollee's participation in the program.
- iv. **Administration Methods:** The IDL, as the administrator of the supplemental measures program, will undertake the following actions to

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implement this program and to ensure enrollee compliance:

- (a) **Field Manual:** The IDL will create a field implementation manual for all enrollees to the plan within 3 months.
 - (b) **Participant Training:** IDL will create a standardized training workshop program, including field and office procedures, to be utilized by enrollees within 6 months of signing an enrollment agreement. This program will be utilized to certify that field personnel understand the supplemental measures and can apply them on the ground.
 - (c) **Inspections:** As part of the normal process of IFPA notification and inspection, the IDL will conduct field inspections of enrollee operations. All inspection items relevant to the Supplemental Measure will be reported separately, with copies sent to the operator and landowner as standardized in the Field Manual.
 - (d) **Enrollee Annual Audits:** IDL will require the enrollee to file an annual report. This report will include a summation of performance on all program activities, and progress on items such as hot-spot location and repair, stream classification and road system mapping, and road construction, upgrading, repairs and obliterations.
 - (e) **IDL Annual Audit:** IDL will prepare an annual report to NOAA Fisheries and the U.S. Fish and Wildlife Service (FWS, or collectively "Services") summarizing all program activities and detailing the performance of enrollees. This report will also include all applicable data from periodic IFPA audit results and CWE report summations on conditions and trends for enrolled lands that occurred during the preceding year. Also, any final or interim results from adaptive management activities will be reported.
 - (f) **IDL Five Year Audit:** Within 5 years of enrolling in the program the IDL will conduct an audit of all enrollee activities and prepare a report that documents a summary of those activities and compliance/non-compliance with the Supplemental Measure terms. This report will also state the total enrollee statistics as to acres of activity, miles of streams and roads surveyed and/or on which action has been taken. A comparison of the total acres enrolled and the trends of activity will also be included. These periodic audits will also include any accomplishments in adaptive management projects and any changes in procedures or standards brought about from adaptive management projects.
- h. **Forest Landowner Program.** The parties will explore the development of a landowners incentive program as a part of the Section 6 agreement.
 - i. **General Provisions**
 - i. The measures set forth in this document are the product of good faith negotiations for the purpose of resolving legal disputes, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal

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proceeding. Nothing in this document shall be read as an admission or determination by the parties that any of the actions anticipated by this document are necessarily required in order to comply with the Endangered Species Act. Nothing in this document shall be interpreted as suggesting that the FPA standards as they presently exist are insufficient to avoid take of listed species.

- ii. By entering into this Agreement, neither the State of Idaho nor the private parties to this component concede that the present FPA standards are insufficient to avoid take of listed species.

- 3. **Habitat Improvement Program.** The State will develop a program to provide incentives for improving fish habitat. The habitat program will include the following types of measures:
 - a. Correcting existing man-made passage barriers such as unscreened diversions, stream crossings, or instream structures;
 - b. Consolidation of diversions to minimize the number of screens and bypasses;
 - c. Development and construction of suitable alternatives to push-up dams;
 - d. Projects that will restore large organic debris (LOD) in streams and riparian zones, repair or remove structures that degrade fish habitat, stabilize or abandon roads, and other habitat improvement projects identified through the Cumulative Watershed Effects process;
 - e. Incentives to private landowners to undertake projects or implement other measures to enhance riparian habitat;
 - f. Habitat improvement or protection projects, such as land acquisition, conservation easements and the development of best management practices designed to provide for water quality for resident and anadromous fish;
 - g. Improving or protecting flow conditions to augment streamflows; and
 - h. Planning and monitoring.
- 4. **Purpose.** These measures are expected to protect and restore listed fish and their habitat in the Salmon and Clearwater basins and downstream basins.
- 5. **Funding.** Funds from the Habitat Trust Fund, in part (and without judgment or conclusion as to whether the amount available from the fund is, by itself, sufficient to adequately implement the Initiative), will be used to implement the Salmon/Clearwater Habitat Management and Restoration Initiative.

C. Habitat Trust Fund.

- 1. As part of the settlement agreement, the parties will establish a trust fund to which the United States will contribute \$38 million (in 2004 dollars) according to a schedule determined by Congress in legislation implementing this Agreement.
- 2. The purpose of the fund is to supplement monies otherwise available for habitat protection and restoration in the Salmon and Clearwater basins through projects, purchases, and investments such as those specified in section II.B.3 above.
- 3. The fund will be divided into two accounts: (1) one-third of the contribution of the United States to the fund will be placed into an account for which the Nez Perce Tribe will develop a process for administration ("tribal account"), and (2) the remainder will be placed into an account for the which primary purpose will be implementation of a

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Section 6 Cooperative Agreement(s) anticipated by this Agreement (see section II.D below) ("Section 6 account"). The State will collaborate with the Nez Perce Tribe and the United States to determine how to direct use of the Section 6 account. If any part of the Section 6 account is available beyond that needed for implementation of any Section 6 Cooperative Agreement(s) anticipated by this Agreement, remaining funds may be used for other habitat purposes as directed by the State, the Nez Perce Tribe, and the United States. In administration of the Section 6 account, the State of Idaho will contribute a value of no less than 33% of the contribution of the United States (*i.e.*, Idaho and the United States will provide 25%/75% matching contributions). If any portion of the fund is used to implement a Section 6 Cooperative Agreement(s), the proportional federal contribution to that portion of the fund will be considered to be a federal contribution towards implementation of the Section 6 agreement.

D. Section 6 Cooperative Agreement.

1. The State of Idaho will submit the Salmon and Clearwater Habitat Management and Restoration Initiative or components thereof to the Services as a proposed cooperative agreement(s) under Section 6 of the Endangered Species Act, 16 U.S.C. § 1535(c). The Services will enter into a Cooperative Agreement(s) with the relevant state agencies under Section 6(c) of the Endangered Species Act for the purpose of assisting the State in implementation of components of the Initiative for a thirty-year period. This Section 6 Cooperative Agreement(s) will be limited to the matters set forth in this settlement agreement. The Section 6 Cooperative Agreement(s) between the Services and the State is intended to satisfy the requirements of section 7(a)(2) of the ESA, while at the same time providing sufficient incentives to private landowners to encourage their participation in the Initiative.
2. The Parties will commit sufficient resources to complete drafting of a Section 6 Cooperative Agreement for the State Forestry Program by March 31, 2005 in accordance with the provisions of this section. The Services are committed to collaborate with the State during development of the proposal to maximize the likelihood that the submission satisfies the requirements of Section 6 and Section 7 of the ESA.
3. Federal Procedures
 - a. Endangered Species Act.
 - i. The Services will consult on any Section 6 program submitted by the State under Section 7 of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), regarding the federal approval and implementation of a Section 6 Cooperative Agreement(s). Incidental take authorization shall be extended to all state-authorized diversions and uses of water that are identified and analyzed from those streams identified by the State for inclusion in the Section 6 Cooperative Agreement upon issuance of a Biological Opinion on the Section 6 Cooperative Agreement(s).
 - ii. Similarly, the owners of state and private lands in Idaho ("owners"), and those undertaking timber management activities on such lands ("operators") who enroll in the forest practices program shall be entitled to incidental take coverage upon issuance of the Biological Opinion on the Section 6 Cooperative Agreement for the State Forestry Program so long as

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such owners or operators are employing timber management practices that meet or exceed mandatory best management practices (BMPs) set forth in the Idaho Forest Practices Act (IFPA), Idaho Code §§ 38-1301 et seq. and are implementing the program.

- iii. A Biological Opinion(s) on any Section 6 Agreement(s) also will provide incidental take authorization for those who participate in the habitat program when they implement measures (including some of those found in section II.B.3) in accordance with the findings that derive from an analysis in the biological opinion(s) on a Section 6 Cooperative Agreement(s).
 - b. National Environmental Policy Act. The Services will prepare appropriate environmental documents and comply with the procedural requirements of the National Environmental Policy Act associated with the review and approval of a Cooperative Agreement(s).
 - c. In issuing biological opinions on a Section 6 Cooperative Agreement(s), the federal agencies shall allow the State and the parties to this Agreement to participate in the consultation and comment on the draft biological opinion.
 - d. Reinitiation of consultation on the NOAA Fisheries or the FWS FCRPS or the other component biological opinions shall not automatically trigger reinitiation of consultation on any Section 6 Cooperative Agreement(s) biological opinion.
 - e. Consultation on a Section 6 Cooperative Agreement(s) biological opinion may be reinitiated only under the following circumstances:
 - i. The State or the participants fail to comply with the terms and conditions of this agreement;
 - ii. To reduce the obligations of the parties in the event the measures in the agreement are determined to no longer be necessary; or
 - iii. Pursuant to 50 C.F.R. § 402.16.
 - f. Nothing in this section is intended to limit the use of habitat conservation plans, landowner incentives, or other habitat protection and restoration programs under the Endangered Species Act, the Fish and Wildlife Coordination Act, the Fish and Wildlife Act, or other federal or State laws.
 - g. The federal agencies may only seek additional Endangered Species Act measures in the Salmon and Clearwater Basins for the covered activities and covered species if:
 - i. The federal agencies have implemented relevant RPA actions set forth in all other biological opinions intended to benefit Snake River Basin listed species; and
 - ii. All other discretionary measures, including but not limited to, reinitiation of consultation on other relevant BiOps and the component biological opinions, that provide the reasonable potential for achieving necessary reductions in the mortality of the Snake River listed species have been implemented, to the maximum extent practicable.
- E. **Termination.** If the United States reinitiates consultation on or revokes incidental take authorization, the State may terminate the Cooperative Agreement.

III. Snake River Flow Component.

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- A. General Principle: Biological Opinions will be issued for the term of this agreement which will provide incidental take coverage, if necessary, for all federal actions and related private actions including: (1) all BOR actions in the upper Snake River basin, (2) all private depletionary effects in the Snake River basin above the Hells Canyon Complex² to the extent they affect listed anadromous fish, and (3) all private depletionary effects above the Hells Canyon Complex to the extent that they are related to the federal action and affect listed resident species. These Biological Opinions shall be separate from any Federal Columbia River Power System (FCRPS) Biological Opinion. Separate biological opinions will be prepared for other components as necessary. Additionally, the parties will use their best efforts to seek enactment of state and federal legislation consistent with the terms of the general conditions to provide the necessary ESA and CWA protection for this component of the agreement and to provide statutory authority necessary to implement the agreement. The flows provided in this agreement set forth the flow contribution from the upper Snake above the Hells Canyon Complex for the benefit of listed species covered by this agreement as they travel throughout the Columbia River system, including through the FCRPS. The biological opinion on this component to be prepared by NOAA Fisheries will directly address and evaluate the expected effects of BOR's proposed operations in the Upper Snake, including any beneficial effects on anadromous fish from the flow augmentation program established in this component.
- B. Tier 1—Minimum Flow. The minimum instream flows established by the Swan Falls Agreement shall be decreed in the SRBA to the Idaho Water Resource Board (IWRB). If the Idaho Department of Water Resources fails to regulate these minimum instream flows in accordance with the Swan Falls Agreement, then any party to this agreement shall be entitled to seek injunctive relief through the state district court responsible for the SRBA.
- C. Tier 2—Flow Augmentation. The parties will establish a term-of-the-agreement flow augmentation program containing the following elements:
1. All flow augmentation from waters of the State of Idaho pursuant to Idaho Code § 42-1763B shall be done in compliance with Idaho state law and regulations, existing water bank rules and existing local rental pool procedures of the appropriate local committee, including but not limited to last to fill rule and the procedures for priorities among renters and lessors, unless changes are agreed to by the spaceholders within the water district(s) in which the reservoirs are located, the State of Idaho, and BOR. Unless otherwise agreed by the parties to give effect to sections III.D and III.E, all parties agree that they will refrain from exercising the procedures for priorities among renters and lessors the specific uncontracted storage space now held by BOR assigned for flow augmentation and powerhead available for flow augmentation as shown on Appendix III as long as this agreement has not been terminated or has not expired. Except as otherwise provided, nothing in this component shall be construed or interpreted as affecting or in any way interfering with the laws of the State of Idaho relating to the control, appropriation, use, or distribution of water or any vested rights created thereunder, or as conferring new authority to, or modifying existing authority of the

² "Above the Hells Canyon Complex," when used in this term sheet, means the Snake River basin above the Complex, including any tributaries which drain into the Complex.

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- federal government.
2. The flow augmentation program above the Hells Canyon Complex is designed to assist fish survival downstream of Hells Canyon Dam. The parties understand that the flow augmentation program provides maximum amounts of flow augmentation delivered from the upper Snake and that no guarantee can be provided, beyond the terms of this agreement, that any particular amount of water will be provided in any particular water year.
 3. Sources shall include, but are not limited to contracted and uncontracted storage, powerhead, Oregon natural flow water, Sho-Ban water bank water, rentals pursuant to the IWRB Water Bank, and natural flow acquisitions herein provided.
 4. Idaho Code § 42-1763B will be reenacted to authorize the rental of up to 427,000 acre-feet (AF) of water annually for flow augmentation for the term of the agreement. Reauthorization shall also provide for the rental of water from storage or natural flow sources from the Snake River and its tributaries at or above Lewiston.
 5. If necessary to implement the flow augmentation program of this section III, the BOR will negotiate a lease with Idaho Power pursuant to Idaho Code § 42-108A to rent uncontracted and powerhead space in the Boise Project, Arrowrock Division, for power production. In the event powerhead water is released pursuant to this section, it shall be the last of the last space to refill.
 6. The United States may also acquire on a permanent basis or rent up to 60,000 acre-feet of consumptive natural flow water rights diverted and consumed below Milner and above Swan Falls from the mainstem of the Snake River. The United States may rent said rights for flow augmentation through the IWRB Water Bank pursuant to the Board's water bank rules and I.C. Sec. 42-1763B as amended (to include up to 60,000 acre-feet of consumptive natural flow acquisition and to allow its use pursuant to this section). The 60,000 acre-feet may be rented through the water bank as long as the total rentals in III.C.4, III.C.5 and this III.C.6 do not exceed 487,000 acre-feet.
 7. Powerhead water in BOR storage facilities may be used only to increase the reliability of 427,000 acre-feet for flow augmentation and is subject to the following limitations:
 - a. After utilization by the United States of all water described in sections III.C.4 through 6, above, if the total amount of water released for flow augmentation is less than the 427,000 acre-feet, the Palisades Reservoir powerhead water may be utilized by the United States to attain 427,000 acre-feet for flow augmentation;
 - b. Use of powerhead shall not at any time interfere with the currently established minimum conservation pools or hereinafter established minimum conservation pools;
 - c. Powerhead space used for flow augmentation shall be the last space to refill after all other space in reservoirs in that water district, including other space used to provide flow augmentation, in the basin has filled;
 - d. Use of water from powerhead space shall be in compliance with state law;
 - e. Use of powerhead space shall not interfere at any time with the operating levels required for diversions of water by spaceholders in the reservoir pool, with the ability of spaceholders to refill and use active storage of the reservoir, or with the diversion of natural flow.
 8. Rental charges for stored water.

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- a. A uniform rate will apply to all stored water released for flow augmentation:
 - i. \$14 per acre-foot through 2012,
 - ii. \$17 per acre-foot from 2013-2017,
 - iii. \$20 per acre-foot from 2018-2022,
 - iv. \$23 per acre-foot from 2023-2030.
 - b. The above rates are comprehensive. They include administrative fees and all other charges.
 - c. The administrative fee on BOR storage will equal the administrative fee applicable to other rentals within the basin in question.
9. All water released from BOR projects in the irrigation season after April 10 shall be treated as releases for flow augmentation except for releases (1) for delivery to or use by spaceholders, contract holders, or rentals from the water bank for purposes other than flow augmentation; (2) pursuant to established water rights; (3) in accordance with existing project operation criteria or other subsequent project operation criteria agreed to by the spaceholders and contract holders within the water district in which the reservoirs are located, the State of Idaho, and BOR; or (4) pursuant to duly adopted flood control rule curves.
10. Regulation of the delivery of rental water shall be the responsibility of the IDWR and appointed state watermasters. The timing of the release of water shall be determined by a process involving the State, the spaceholders, contract holders, and the United States.
- D. Water District 01 Rental Pool. The State of Idaho, BOR, and the spaceholder contractors in Water District 01 agree, to consider changes to rental pool procedures in Water District 01 as part of the flow augmentation program outlined in section III.C above. The State and the spaceholder contractors acknowledge that BOR, in negotiating a final agreement, will require that any rental pool provide BOR with an acceptable opportunity, as determined by it, to rent water for flow augmentation.
- E. The United States shall make its Upper Snake basin uncontracted space available to irrigation delivery entities, if the United States or irrigation delivery entities obtain the rights to an equivalent amount of replacement water from subbasins within the Upper Snake to be used for flow augmentation. Details regarding the exchanges anticipated in this section will be defined in the final settlement agreement.
- F. Reclamation will make available for irrigation, subject to the triggers and conditions in this section III.F, 30,000 acre-feet of water from the Boise Project, Payette Division. This water will be from sources exclusive of the 95,000 acre-feet of storage currently used for flow augmentation.
1. Triggers. Water under this section will be made available only under the following water year conditions, based on the April 1 forecast used by Reclamation of April through July runoff for the Payette River at Horseshoe Bend and the Boise River at Lucky Peak. For the Payette basin, this provision will be triggered when the April 1 forecast at Horseshoe Bend is less than 700,000 acre-feet. For the Boise basin, this provision will be triggered when the April 1 forecast at Lucky Peak is less than 570,000 acre-feet.
 2. Conditions of use.
 - a. The maximum volume of water to be provided by Reclamation under this provision in any given water year will be 30,000 acre-feet.

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- b. Water may be used directly by Payette River water users and through exchange by Boise River water users within irrigation entities signatory to this agreement. The Boise exchange will be effected by Reclamation making water available to Boise River water users from the Boise Project in lieu of releasing that water for flow augmentation. An equivalent amount of water from the Payette storage identified above would then be released for flow augmentation.
 - c. When the Payette trigger is met, Reclamation will consign 30,000 acre-feet of Payette Division water to the Water District 65 Rental Pool, for one-year rental by irrigation water users in the Payette basin. The price for Payette rentals will be 50% of the price applicable to flow augmentation rentals or the price applicable to irrigation rentals in the basin, whichever is greater.
 - d. When the Boise trigger is met, Reclamation will consign 30,000 acre-feet of Arrowrock Division water to the Water District 63 Rental Pool, for one-year rental by irrigation water users in the Boise basin. Reclamation will then deliver a like amount of water from the Payette Division for flow augmentation, over and above the volume otherwise available from Reclamation-held storage. The price for Boise basin rentals will be the price applicable to flow augmentation rentals or the price applicable to irrigation rentals in the basin, whichever is greater.
 - e. When both triggers are met, Reclamation will consign a total of 30,000 acre-feet to be divided between Water Districts 63 and 65. Water Districts 63 and 65 will meet within 30 days of the publication of the April 1 forecasts at Lucky Peak and Horseshoe Bend, and determine how much water will be made available in each basin, with the understanding that irrigation entities in Water District 65 have the first right to rent the water consigned, up to the full amount consigned. As divided, the water rentals will be subject to the exchange conditions and prices applicable to that basin, as defined in sections c and d above. The water users will negotiate a process for implementation of this provision.
 - f. Once water is consigned to a rental pool, water users will have until July 15 to rent the water. Water not rented by July 15 will return to Reclamation.
- G. The United States will mitigate local impacts identified by the State of Idaho that may result from the rental of water for flow augmentation. The scope and amount of mitigation will be negotiated. Mitigation shall be based on the following understandings:
- 1. Powerhead: In setting rates for power and energy provided by BOR for project purposes entitled to the use of reserved power, BOR will insure that reserved power rates are neither increased nor decreased as a result of the leasing and release of water from powerhead space under the terms and conditions set forth in this agreement.
 - 2. 60,000 acre-feet: The federal legislation drafted to authorize the agreement will include a provision to authorize and seek appropriations for a one-time payment of \$2 million to the local governments in which the water rights accruing up to 60,000 acre-feet are currently used to mitigate for the change in use of the acquired water.
- H. The minimum evacuation reservoir levels for flood control shall not be altered for reasons other than flood control purposes.
- I. The Milner Agreement shall be renewed for the term of this agreement. The parties agree, however, to modify the flow limitation contained in the agreement to the extent practical to facilitate the water rental program, while still protecting the interests of the parties.

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- J. To the maximum extent practicable, the United States shall be responsible for managing water acquired or rented pursuant to this agreement to meet needs of all species covered by this agreement. To the maximum extent practicable, all water acquired or rented by the United States under this agreement shall be delivered and managed: (1) in a manner that will not result in the violation of any permit, applicable water quality rule and regulation or other requirements of the Clean Water Act; (2) in a manner that will not cause jeopardy to other species in the State of Idaho; and (3) in a manner that will not result in significant adverse impacts to recreational uses of the waters of the Snake River and its tributaries within the State of Idaho. During the development of the Biological Assessment by BOR, the parties, to ensure that all water acquired or rented by the United States under this agreement does not result in the type of impacts listed above, will address the concerns that can be identified and analyzed and will develop a mutually acceptable process to address the type of impacts listed above that arise after implementation of the agreement. The State agrees that it will not require any restriction, modification, or condition on the diversion, storage, use, discharge of water, or land use to remedy or address violations of water quality standards or other Clean Water Act requirements to the extent the use of water acquired or rented by the United States pursuant to this agreement causes the violations.
- K. The term of this component of the agreement shall be for a period of thirty (30) years with opportunity for renewal upon mutual agreement.
- L. The proposed federal action for consultation will describe the agreement, including the minimum instream flows, the water rental program, and BOR operations as of the date of the agreement and during the term of the agreement, subject to the general principle contained in the agreement. In the event that the BOR fails to describe the proposed federal action consistent with this component, or it fails to issue a Biological Assessment based upon the proposed federal action which concludes that the action is not likely to jeopardize the continued existence of any listed species addressed by this consultation nor will it result in destruction or adverse modification of the critical habitat of the species, this component of this agreement shall be terminated upon written notice by the State or private parties to this component of the agreement.
- M. Consistent with the Snake River Flow Component general principle (section III.A), the Services will evaluate this component as a proposed federal action under section 7 of the Endangered Species Act. 16 U.S.C. § 1536. In the event that the Services fail to issue no jeopardy biological opinions and provide incidental take coverages as described in section III.A, or if the Services require terms or conditions inconsistent with or not contained in this Upper Snake component of the agreement, this component of the agreement shall be terminated upon written notice by the State or private parties to this agreement.
- N. Reinitiation of Consultation
 - 1. If the United States is unable to rent flow augmentation water under the terms of this agreement because of a change to state law, regulations or water bank rules, or because of an arbitrary or capricious decision by the Director of IDWR or IDEQ, the United States may reinitiate consultation on this component of the agreement. If the United States reinitiates consultation, this component of the agreement may be terminated, including any necessary statutory components, at the option of the State of Idaho or the private parties to this component of the agreement.
 - 2. Reinitiation of consultation on any NOAA Fisheries or FWS FCRPS biological

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opinions (hereinafter "FCRPS BiOps"), or on the biological opinions on other components of this agreement shall not automatically trigger reinitiation of consultation on the Upper Snake BOR biological opinion. Rather, consultation on the Upper Snake BOR biological opinion may be reinitiated only a) if the State or the water users fail to comply with the terms and conditions of this agreement or the United States is unable to rent flow augmentation water under the terms of the agreement because of a change to state law, regulations, or water bank rules; b) to reduce the obligations of the parties in the event the measures in the agreement are determined to no longer be necessary for any reason, including, but not limited to, the delisting of the species; or c) pursuant to 50 C.F.R. § 402.16.

3. The federal agencies which are parties to this agreement may only seek additional Endangered Species Act flow measures from the Snake River basin above the Hells Canyon Complex for the benefit of anadromous fish if: a) a jeopardy biological opinion is issued on the Upper Snake River BOR projects after utilization of all of the measures in this agreement; b) the relevant actions set forth in all other biological opinions intended to benefit Snake River basin listed species have been implemented; c) substantially all water made available under the terms and conditions of this agreement has been rented; and d) all other discretionary measures, including reinitiation of consultation on other relevant BiOps, that provide the reasonable potential for achieving necessary reductions in the mortality of the Snake River listed species have been or are being implemented, to the maximum extent practicable. In issuing any future biological opinions on Upper Snake River BOR projects, the federal agencies shall provide all parties to this agreement an opportunity to comment on the draft biological opinion. The provisions concerning reinitiation of consultation for the Upper Snake BOR projects shall remain effective so long as this component is effective.
 4. Nothing in this agreement shall be used or construed to determine or interpret in any manner what obligations, if any, the federal agencies charged with operating the FCRPS may have under the 2000 FCRPS BiOps, or other biological opinions addressing FCRPS operations or the Endangered Species Act or its implementing regulations as applied to the FCRPS, provided that no additional flows shall be required from the upper Snake above the Hells Canyon Complex except as provided for in this agreement.
- O. Subject to section IV.G of this agreement, if any party fails to implement any provision of this component, this component may be terminated at the option of any other party to this component of the agreement. By entering into this agreement, neither the State of Idaho nor the private parties to this component concede that the flows identified under section III.C benefit the listed species; that BOR operations require ESA consultations; that BOR operations are subject to modification to meet ESA requirements or concerns; or that the diversion, storage, or use of water in the State of Idaho is subject to modification to meet ESA requirements or concerns.

IV. General conditions applicable to the entire agreement and to all parties. Unless otherwise specified, each of the following general conditions applies jointly and severally to each component of this agreement.

- A. Implementation and enforcement – There will be enactment of necessary laws by federal,

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- state, and tribal governments to effectuate and implement the settlement agreement including legislation consistent with provisions of the agreement to provide the necessary ESA and CWA protection for the State and the private parties to this agreement.
- B. Mitigation of impacts caused by the management of water by the Federal agencies pursuant to this agreement on local and private interests (sideboards to be negotiated).
- C. ESA and CWA Assurances – (1) The water provided under this settlement shall fully satisfy any ESA requirements for the diversion and use of water, as specifically provided in each of the components of this agreement. Compliance with this agreement satisfies all CWA obligations for flows for the benefit of such species for the term of this agreement. No party shall use, during the term of this agreement, the CWA or any other theory to seek additional flows for the benefit of such species based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin above the Hells Canyon Complex and in the Salmon and Clearwater basins in Idaho.³ (2) The Services shall evaluate each component of this agreement as separate proposed federal actions under the Endangered Species Act, 16 U.S.C. § 1536. Term-of-the-agreement (thirty (30) years) Biological Opinions will be issued on each component of this agreement. The specific provisions relating to these Biological Opinions are contained in the respective sections of this agreement. These Biological Opinions shall be separate from the FCRPS Biological Opinion. In the event that the Services fail to issue no jeopardy biological opinions or if the Services require terms or conditions inconsistent with or not contained in the component of the agreement which corresponds to the biological opinion, that component of the agreement shall be void upon written notice by the State or private parties to this agreement. If the State or private parties do not concur with the biological assessment prepared for the consultation on a particular component, that component of the agreement shall be terminated upon written notice by the State or private parties.
- D. Waivers and releases.
1. Except as otherwise provided in the Settlement Agreement, the United States, on behalf of the Nez Perce Tribe, and the Nez Perce Tribe waive and release (1) all claims for water rights within the Snake River Basin in Idaho; (2) injuries to such water rights; and (3) injuries to the Tribe's treaty rights to the extent that such injuries result or resulted from flow modifications or reductions in the quantity of water available in the Snake River Basin in Idaho that accrued at any time up to and including the effective date of the Settlement Agreement, and any continuation thereafter of any such claims, against the State of Idaho, any agency or political subdivision thereof, or any person, entity, corporation, municipal corporation, or quasi-municipal corporation. The Tribe agrees that it will not assert any claim, under any treaty theory, based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin in Idaho, against any party to the agreement. No water rights claims the Tribe has asserted or may in the future assert outside of the Snake River Basin in Idaho shall require water to be supplied from the Snake River

³ Nothing in this agreement is intended to affect in any way the development, approval, modification, implementation, or enforcement of Clean Water Act Total Maximum Daily Load (TMDL) requirements for Brownlee Reservoir.

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Basin in Idaho to satisfy such claims. Allottee language will be developed by the parties for inclusion in the decree to reflect the concept that the allottees' water comes from the overall tribal right.

2. "Water rights" means rights under state and federal law to divert, pump, impound, use or reuse, including for instream use, or permit others to divert, pump, impound, use or reuse, including for instream use, water. This includes all water right claims filed by or on behalf of the Nez Perce Tribe in the Snake River Basin Adjudication. "Injuries to water rights" means the loss, deprivation, or diminution of water rights.
 3. The Nez Perce Tribe hereby waives and releases the United States from: (1) all claims for water rights within the Snake River Basin in Idaho, injuries to such water rights, or breach of trust claims for failure to protect, acquire, or develop such water rights that accrued at any time up to and including the effective date of the Settlement Agreement; (2) all claims for injuries to the Tribe's treaty fishing rights to the extent that such injuries result or resulted from reductions in the quantity of water available in the Snake River Basin in Idaho; (3) all breach of trust claims for failure to protect Nez Perce "springs or fountains" treaty rights reserved in Article 8 of the 1863 Treaty with the Nez Perce; and (4) all breach of trust claims arising out of or resulting from the adoption of this Settlement Agreement. Provided, however, that waivers described in this section shall not be effective until all Federal funds described in the term sheet are appropriated and paid to the Nez Perce Tribe.
 4. Nothing in this agreement shall waive the Tribe's right to pursue claims against the United States relating to non-water-related injuries resulting from the construction of the Dworshak Project. Nothing in this agreement shall be interpreted to prevent the Nez Perce Tribe or the United States as trustee for the Tribe from purchasing or otherwise acquiring water rights in the future to the same extent as any other entity in accordance with Idaho state law. Nothing in this agreement shall be interpreted to impair the treaty fishing, hunting, pasturing, or gathering rights of the Nez Perce Tribe except to the extent expressly provided in this agreement. The Nez Perce Tribe shall retain all rights not specifically satisfied, waived, or released in this agreement.
 5. The waiver and releases by the federal government and the Nez Perce Tribe shall take effect and be permanent once the agreement is effective and enforceable pursuant to section IV.L. Waivers, once effective, will survive any subsequent termination of any component(s) of the agreement.
- E. This agreement, the decree, and the order approving this agreement may not be modified in any manner except as herein provided or with the joint written consent of the duly authorized representatives of the parties and the consent of the court approving this agreement, which court shall have the sole jurisdiction to modify its decree. The parties further recognize that the law dealing with federal reserved Indian water rights is a subject of ongoing litigation and agree that subsequent changes, developments, or interpretations in such law shall not change the enforceability of this agreement as written in the decree relating to such rights. Nothing in this agreement shall otherwise be construed or interpreted to restrict, enlarge, or otherwise determine the subject matter jurisdiction of any state, tribal or federal court.
- F. If any party believes that another party has failed to perform or implement a provision of this agreement, the party will inform the other party, and the parties will meet to seek to resolve the dispute. If the dispute cannot be resolved, one or more parties may request that the SRBA

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- court (or any successor court) appoint a mediator, provided that the mediation will not be binding and will not be prejudicial to any jurisdictional issues raised by the dispute.
- G. A breach of one component of this agreement shall not constitute a breach of any other component of the agreement.
 - H. Nothing in this agreement shall be so construed or interpreted: (1) to establish any standard to be used for the quantification of federal reserved water rights or any other Indian water claims of any other Indian Tribes in any judicial or administrative proceeding or (2) to limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this agreement. This agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding and nothing in this agreement shall be read as an admission or determination by the parties that any of the actions anticipated by this agreement are necessarily required under the Endangered Species Act.
 - I. Implementation of this Agreement by the federal or state agencies is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519, similar requirements of state law, and the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the State General Fund. The Parties acknowledge that the federal or state agencies shall not be required under this Agreement to expend any appropriated funds unless and until an authorized official of the relevant agency affirmatively acts to commit to such expenditures in writing.
 - J. No member of or delegate to Congress shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.
 - K. The parties will jointly move the Idaho Supreme Court to remand the pending appeal in Case Nos. 26042 and 26128 for entry of an order consistent with the final settlement agreement.
 - L. The agreement shall be effective when all of the following have occurred prior to March 31, 2005 (this list is not intended to determine the proper sequencing of these actions):
 - 1. Execution of the necessary component documents which will make up the agreement;
 - 2. Congressional approval of agreement and authorization of all federal expenditures required under agreement;
 - 3. State legislature approval of agreement and enactment of all required state legislation;
 - 4. Nez Perce Tribe approval of agreement;
 - 5. SRBA Court entry of judgment and decree incorporating agreement;
 - 6. Issuance of the Biological Opinions anticipated by the upper Snake component of this agreement.

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Appendix I

This appendix to Section II of the term sheet describes an implementation plan to assign instream flows and reserve opportunities for future use in the Tribal Priority Streams in the Salmon and Clearwater Basins by March 31, 2005. All instream flow water rights established pursuant to the Agreement and this Appendix I will be junior to all existing water rights and subordinate to all future domestic, commercial, municipal, and industrial (DCMI) water rights.

The Tribal Priority Streams are listed in the attached Lists "A" and "B." Some of the streams on these lists are included in the Wild and Scenic Settlement Agreement between the State of Idaho and the U.S. Forest Service. Because this implementation plan is intended to be consistent with the Wild and Scenic federal reserved water rights, where Wild and Scenic stream reaches are involved, the plan adopts the future development subordinations in the Wild and Scenic reserved water right decrees.

The Tribal Priority Streams have been divided into "A" and "B" List groups based on the level of existing use. The "B" List streams include those streams where instream flows and other non-flow-related actions will be developed by the parties, in conjunction with local stakeholders and communities. The "A" List Tribal Priority Streams will have instream flows and future non-DCMI use levels assigned based on land classification except in those cases specifically set forth below where the parties have agreed to address certain special resource value areas, or areas of special concern relative to local uses. Land classification will be established based upon the predominant land ownership and where appropriate, federal land classification, existing in particular stream's basins.

For the "A" List Tribal Priority Streams, instream flows would be determined based on categories assigned using ownership of the lands within the basin. The ownership classification in a given basin would be recognized as falling into one of four categories: 1) State and private, 2) federal non-wilderness, 3) wilderness/Wild and Scenic, and 4) special areas as set forth below.

For each of these four categories, instream flows will be set by month based on estimated hydrology of unimpaired flows, and a reservation for future non-DCMI use equal to a percentage of the minimum monthly median flow value from the estimated hydrology.⁴ To prevent dewatering streams by future non-DCMI use, future non-DCMI use would be curtailed at a floor equivalent to the unimpaired monthly 80% exceedence flow. Consequently, the flow values for the four categories will be as follows:

1. For State and private basins, instream flows would be decreed for each month of the year at the 50% exceedence level of the estimated unimpaired flow, subordinated to a future non-DCMI use in the amount of 25% of the lowest median monthly unimpaired flow value.

⁴ The algorithms proposed here for establishing instream flows, future allocations, and the floor flow are based on exceedence values. The individual instream flows will be decreed as quantities in cubic feet per second (cfs) as will the future allocation for non-DCMI uses and floor flows. The administrative provisions for these instream flows will, however, recognize they are being established based upon estimated flow. The provisions of the final decrees will provide a mechanism for changes to these decreed amounts based upon actual flows if such data become available.

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2. For federal, non-wilderness basins, instream flows would be decreed for each month of the year at the 40% exceedence level of the estimated unimpaired flow, subordinated to a future non-DCMI use in the amount of 10% of the lowest median monthly unimpaired flow value.

3. For federal wilderness and Wild and Scenic basins, instream flows would be decreed for each month of the year at the 30% exceedence level of the estimated unimpaired flow, subordinated to a future non-DCMI use in the amount of 5% of the lowest median monthly unimpaired flow value.

4. The Special Areas include watersheds that hold special values including high value habitat for fish resources, other special values, and areas where future development opportunities would be preserved. The instream flows and reservations for future non-DCMI use for the special areas differ from the land-based formula described above.

Special Areas include:

Lower Salmon River below Long Tom Bar to the mouth: Instream flows for the lower Salmon River downstream of the Wild and Scenic Reach would be consistent with the application filed for the lower Salmon River below Hammer Creek. The State application for the instream flow in the Lower Salmon addresses the reach from the mouth to Hammer Creek. The instream flows reach in the current application will be extended to include the reach of the Salmon below the Little Salmon. The instream flows in the reach between the Little Salmon and the Wild and Scenic River will be based on the downstream reach and adjusted for the inflow from the Little Salmon River. The State instream flow will be made consistent with the Wild and Scenic instream flow for the main Salmon River.

South Fork Salmon River and tributaries contained within the Tribal Priority Stream List: Instream flows would be decreed for each month of the year at the 40% exceedence level of the estimated unimpaired hydrology, subordinated to a future non-DCMI use in the amount of 5% of the lowest median monthly unimpaired flow value.

Upper Salmon: The upper Salmon basin includes a number of tributaries that meet the criteria of "B" List streams. Instream flows established for the tributaries or the mainstem Salmon will be in accord with Wild and Scenic River instream flows and future allocations, subject to the Order Approving Stipulation and Dismissing Objections in Consolidated Subcase Nos: 63-25239, 75-13316, and 75-13606, issued by Judge Daniel C. Hurlbutt, Jr., Presiding Judge, Snake River Basin Adjudication, on June 16, 1998.

Lolo Creek: Instream flows will be decreed for each month of the year at the 40% exceedence level of the estimated unimpaired hydrology, subordinated to a future non-DCMI use in the amount of 10% of the lowest median monthly unimpaired flow value.

Bedrock Creek: Instream flows will be decreed for each month of the year at the 40% exceedence level of the estimated unimpaired hydrology, subordinated to a future non-DCMI use in the amount of 10% of the lowest median monthly unimpaired flow value.

Upper North Fork Clearwater River, Breakfast Creek: Instream flows would be decreed for each month of the year at the 40% exceedence level of the estimated unimpaired hydrology, subordinated to a future

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non-DCMI use in the amount of 10% of the lowest median monthly unimpaired flow value.

Future Uses for "A" List streams.

The future use allocations will provide water for non-DCMI uses. The parties will study the overlap of existing uses and future use to determine if additional criteria will assist the parties in allocating future use. The goal is to avoid reducing streamflows to a level where the unimpaired 80% exceedence value is the flow that normally occurs in the stream due to the combination of existing and future use.

Mediator's Term Sheet*April 20, 2004 Final Term Sheet*List A. Non-Developed Streams

Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)
Captain John Creek	Snake River	1107	1107
Clearwater River	Snake River	143, 150, 152, 155, 156, 160, 165, 167, 168, 181, 182, 196, 223, 229, 248, 260, 276, 277	182, 165
Pine Creek	Clearwater River	129	129
Bedrock Creek	Clearwater River	131	131
North Fork Clearwater	Clearwater River	42, 51, 59, 71, 73, 83, 96, 113, 118, 130, 146, 39, 31, 30, 10, 34, 35, 37, 56, 61, 66, 91, 99, 95, 70	34, 39, 146
Elk Creek	North Fork Clearwater River	75, 27	75
Skull Creek	North Fork Clearwater River	41, 22	41
Collins Creek	Skull Creek	14	14
Breakfast Creek	North Fork Clearwater River	25, 28	25
Fourth of July Creek	North Fork Clearwater River	102	102
Lake Creek	North Fork Clearwater River	40, 46	40
Little N.F. Clearwater	North Fork Clearwater River	2, 12, 17, 24	24
Canyon Creek	Little N.F. Clearwater River	4, 6	4
Foehl Creek	Little N.F. Clearwater River	9	9
Isabella Creek	North Fork Clearwater River	23	23
Weitas Creek	North Fork Clearwater River	125, 128, 140, 141, 157, 163	125, 157
Kelly Creek	North Fork Clearwater River	60, 78, 81, 87, 89	81
Cayuse Creek	Kelly Creek	94, 101, 109, 119	94
Toboggan Creek	Cayuse Creek	105	105
Vanderbilt Gulch Creek	North Fork Clearwater River	20	20
Orofino Creek	Clearwater River	144, 149, 158, 172	172
Lolo Creek	Clearwater River	186, 210, 247, 256	210
Yakus Creek	Lolo Creek	267	267
Eldorado Creek	Lolo Creek	216	216
Musselshell Creek	Lolo Creek	190	190
Yoosa Creek ¹	Lolo Creek	186	9186
Sixmile Creek	Clearwater River	244, 253	253
Effie Creek	Sixmile Creek	254	254
Fivemile Creek	Clearwater River	231	231
Unnamed Stream	Clearwater River	243	243
South Fork Clearwater	Clearwater River	306, 326, 327, 340, 357,	306, 411

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Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)
		363, 399, 403, 405, 409, 410, 411, 413, 416, 423	
Threemile Creek	South Fork Clearwater River	338	338
Mill Creek	South Fork Clearwater River	417	417
Meadow Creek	South Fork Clearwater River	373	373
Johns Creek	South Fork Clearwater River	419, 440	419
Cougar Creek	South Fork Clearwater River	396	396
Peasley Creek	South Fork Clearwater River	385	385
Silver Creek	South Fork Clearwater River	379	379
Tenmile Creek	South Fork Clearwater River	425	425
Newsome Creek	South Fork Clearwater River	358	358
Crooked River	South Fork Clearwater River	420	420
Red River	South Fork Clearwater River	418, 421, 422, 430	422
S. Fork Red River	Red River	444	444
American River	South Fork Clearwater River	364, 389	389
Sally Ann Creek ¹	South Fork Clearwater River	340	340
Middle Fork Clearwater	Clearwater River	287, 290, 308	290
Maggie Creek	Middle Fork Clearwater River	278	278
Clear Creek	Middle Fork Clearwater River	311, 318	311
S. Fork Clear Creek	Clear Creek	344	344
Selway River	Middle Fork Clearwater River	288, 303, 309, 310, 312, 313, 317, 329, 335, 349, 352, 365, 371, 374, 404, 406, 424, 431, 435, 447, 463, 469, 481	309, 404
Gedney Creek	Selway River	289, 300, 320	320
O'Hara Creek	Selway River	325, 346	325, 346
Hamby Fork of O'Hara Creek	O'Hara Creek	345	345
Meadow Creek	Selway River	347, 368, 391, 393, 398, 401, 415	347
Buck Lake Creek	Meadow Creek	366	366
Three Prong Creek	Meadow Creek	414	414
Mink Creek	Selway River	322	322
Marten Creek	Selway River	321	321
Moose Creek	Selway River	292	292
E. Fork Moose Cr.	Moose Creek	251, 258	258
N. Fork Moose Cr.	Moose Creek	239, 255, 272	272
West Moose Cr.	North Fork Moose Creek	227	227
Rhoda Creek	Selway River	259, 270	270

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Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)
Wounded Doe Cr.	Rhoda Creek	250	250
Pettibone Creek	Selway River	291	291
Bear Creek	Selway River	299, 304, 341	341
Cub Creek	Bear Creek	343, 351, 355	351
Goat Creek	Selway River	370	370
Running Creek	Selway River	386, 383	386
White Cap Creek	Selway River	367, 388, 390	388
Indian Creek	Selway River	412	412
Deep Creek	Selway River	433	433
Wilkerson Creek	Selway River	460	460
Lochsa River	Middle Fork Clearwater River	151, 161, 162, 178, 179, 183, 192, 232, 242, 252, 266, 268, 274, 284, 296	296
Pete King Creek	Lochsa River	273	273
Old Man Creek	Lochsa River	261	261
Fish Creek	Lochsa River	201, 219	201
Hungry Creek	Fish Creek	198	198
Boulder Creek	Lochsa River	237	237
Warm Springs Creek	Lochsa River	187, 209	187
Fishing Creek (Squaw Creek)	Lochsa River	135	135
Legendary Bear Creek (Papoose Creek)	Lochsa River	133	133
Walton Creek	Lochsa River	174	174
Crooked Fork	Lochsa River	84, 122, 139	139
Brushy Fork	Crooked Fork	107, 124	124
Spruce Creek	Brushy Creek	126	126
White Sand Creek	Lochsa River	154, 188, 189, 193, 203	154
Big Sand Creek	White Sand Creek	206, 222, 236	206
Big Flat Creek	White Sand Creek	208	208

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Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)
Salmon River	Snake River	323, 330, 331, 353, 354, 356, 369, 380, 384, 397, 432, 441, 445, 454, 458, 467, 474, 475, 486, 488, 489, 490, 494, 499, 505, 508, 511, 512, 515, 517, 520, 521, 522, 524, 525, 527, 530, 532, 535, 538, 541, 544, 545, 546, 549, 550, 551, 553, 558, 564, 570, 574, 575, 578, 580, 582, 587, 592, 604, 629, 664, 705, 717, 747, 786, 788, 831, 851, 853, 876, 916, 924, 928, 989, 1006, 1009, 1013, 1014, 1015, 1016, 1017, 1019, 1027, 1024, 1034, 1047, 1050, 1062, 1065, 1073, 1074	397, 525, 578, 664, 853, 1015
Pine Creek	Salmon River	586	586
Rice Creek	Salmon River	387	387
Rock Creek	Salmon River	372	372
Wind River	Salmon River	471, 519	519
White Bird Creek	Salmon River	408, 407, 427	407
Skookumchuck Creek	Salmon River	437	437
Slate Creek	Salmon River	442, 453, 456, 457	453
Little Slate Creek	Slate Creek	466, 478, 492	466
Sheep Creek	Salmon River	464	464
Billy Creek ¹	Snake River	91105	91105
French Creek	Salmon River	556, 624	556
South Fork Salmon River	Salmon River	583, 613, 659, 666, 695, 714, 740, 744, 752, 770, 771, 806, 823, 896, 1081, 1082	583, 752
Blackmare Creek	South Fork Salmon River	813	813
Porphyry Creek	South Fork Salmon River	610	610
Secesh River	South Fork Salmon River	588, 649, 652, 686	588, 686
Lake Creek	Secesh River	9588	9588
Lick Creek	Secesh River	700	700
E. Fork S. Fork Salmon	South Fork Salmon River	742, 745, 753, 756, 759, 761, 778	745
Profile Creek	E. Fork S. Fork Salmon River	723	723
Johnson Creek	E. Fork S. Fork Salmon River	765, 780, 808, 833, 883	765
Burntlog Creek	Johnson Creek	835	835

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Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)
Quartz Creek	E. Fork S. Fork Salmon River	720	720
Sugar Creek	E. Fork S. Fork Salmon River	757	757
Tamarack Creek	E. Fork S. Fork Salmon River	736	736
Buckhorn Creek	South Fork Salmon River	766, 783	766
Fitzum Creek	South Fork Salmon River	734	734
Warm Lake Creek	South Fork Salmon River	861	861
Bargamin Creek	Salmon River	426	426
Chamberlain Creek	Salmon River	539, 540, 543, 567, 571	540
W. Fork Chamberlain	Chamberlain Creek	526	526
Horse Creek	Salmon River	498, 495, 531, 554	554
Middle Fork Salmon River	Salmon River	631, 607, 612, 658, 711, 739, 762, 777, 794, 814, 818, 820, 839, 847, 864, 884, 894, 917, 932, 958	607, 814
Big Creek	Middle Fork Salmon River	641, 650, 651, 655, 670, 676, 681, 687, 697	655, 697
Rush Creek	Big Creek	706, 709, 713, 725	706
Monumental Creek	Big Creek	671, 701, 750	671
Smith Creek	Big Creek	639	639
Logan Creek	Big Creek	675	675
Brush Creek	Middle Fork Salmon River	751	751
Camas Creek	Middle Fork Salmon River	781, 782, 792, 815, 822, 830, 844, 848, 868	782
Silver Creek	Camas Creek	773	773
Loon Creek	Middle Fork Salmon River	824, 880, 889, 897, 901, 930, 943, 950	824
Marble Creek	Middle Fork Salmon River	758, 789, 805	805
Dynamite Creek	Marble Creek	791	791
Indian Creek	Middle Fork Salmon River	795	795
Pistol Creek	Middle Fork Salmon River	855, 858	855
Rapid River	Middle Fork Salmon River	874, 900, 920	874
Sheep Creek	Middle Fork Salmon River	775	775
Sulphur Creek	Middle Fork Salmon River	918	918
Marsh Creek	Middle Fork Salmon River	971, 981, 986	971
Bear Valley Creek	Middle Fork Salmon River	967, 987	967
Elk Creek	Bear Valley Creek	949, 963, 972	972
Panther Creek	Salmon River	593, 600, 621, 628, 645, 682, 690, 715, 718, 726, 735	600, 735
Lightning Creek	Yankee Fork	964	964
Eightmile Creek	Yankee Fork	962	962
Redfish Lake Creek	Salmon River	1036, 1040	1036
Yellow Belly Lake Cr.	Alturas Lake Creek	1066	1066

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¹ Stream is located within basin number.

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List B. Developed Streams/Watersheds.

Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)	Tributary Quantification Location(s)
Lapwai Creek and tributaries	Clearwater River	195, 197, 207, 213	195	177, 220, 225, 214, 264, 265, 238
Potlatch River and tributaries	Clearwater River	15, 43, 54, 90, 106, 108, 112, 138, 159	159	110
Cottonwood Creek	Clearwater River	170	170	N/A
Jacks Creek	Clearwater River	171	171	N/A
Big Canyon Creek and tributaries	Clearwater River	175, 185, 226, 230	175	234, 235, 180, 241, 245
Whiskey Creek	Orofino Creek	134	134	N/A
Jim Ford Creek	Clearwater River	184, 217	184	N/A
Tom Taha Creek	Clearwater River	257	257	N/A
Lawyer Creek and tributaries	Clearwater River	275, 280, 285, 298, 301	275	283, 293, 294, 302
Cottonwood Creek and tributaries	South Fork Clearwater River	307, 315, 334, 336	307	295
Rabbit Creek	South Fork Clearwater River	332	332	N/A
Big Elk Creek	American River	382	382	N/A
Little Salmon River and tributaries	Salmon River	548, 561, 581, 637, 643, 656, 693, 710, 1079, 1080	548, 693	605, 620, 638
Sheep Creek	South Fork Salmon River	719	719	N/A
Hat Creek	Salmon River	796, 802, 826	826	N/A
East Fork Salmon River and tributaries	Salmon River	1018, 1028, 1032, 1033, 1041, 1046, 1052, 1063, 1068	1018, 1052	1060, 1042, 1053
North Fork Salmon River and tributaries	Salmon River	448, 491, 506, 516, 533	533	N/A
Lemhi River and tributaries	Salmon River	640, 646, 673, 698, 729, 737, 755, 767, 776, 797, 800, 804, 846, 829	640, 800	801
Pahsimeroi River and tributaries	Salmon River	873, 908, 915, 929, 947, 956, 991, 1011, 1031	873	N/A

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Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)	Tributary Quantification Location(s)
Yankee Fork	Salmon River	942, 977, 982, 992, 998, 1001	1001	N/A
Alturas Lake Creek	Salmon River	1067, 1078	1078	N/A
Valley Creek and tributaries	Salmon River	1004, 1008	1008	1021, (streams in 1004 and 1008)

Appendix III

Reclamation Project Reservoirs Above Hells Canyon Dam
Water Assigned for Flow Augmentation

Reservoir	Acre-Feet
Payette	
Cascade	69,600 ¹
Deadwood	25,400 ¹
Subtotal	95,000
Upper Snake	
American Falls	8,951 ²
Jackson	3,923 ²
Palisades	10,022 ²
Subtotal	22,896
Grand Total (non-powerhead)	117,896
Powerhead	
Anderson Ranch powerhead	41,000
Palisades powerhead	157,000
Powerhead Total	198,000

¹Reassigned for flow augmentation.

²Reacquired for flow augmentation.

Attachment 3 to Consent Decree
In re SRBA Case No. 39576

I. CLAIMS FOR DISMISSAL

Pursuant to Consent Decree, Paragraph 2, this Attachment provides a list of the claim numbers to be dismissed pursuant to the Agreement. The Attachment is divided into the following 3 parts:

- Attachment 3A: All Instream Flow Claim Numbers filed by both the Nez Perce Tribe and the United States as trustee for the benefit of the Nez Perce Tribe, Consolidated Subcase No. 03-10022
- Attachment 3B: Claims to Springs and Fountains filed by the United States as trustee for the benefit of the Nez Perce Tribe on private and state-owned lands, Consolidated Subcase No. 67-13701
- Attachment 3C: All Claims to Springs and Fountains filed by the Nez Perce Tribe, Consolidated Subcase No. 67-13701

II. CLERICAL ISSUES REGARDING CLAIM NUMBERS

In addition to the lists of claim numbers to be dismissed outlined above, the following Sections outline certain clerical issues for the court which may require attention in order to assure final claim number lists are correct.

A. Duplicate "Springs or Fountains" Claim Numbers

The Parties' review of the Notice of Federal Claims for the "springs or fountains" claims revealed fifteen duplicate claim numbers. In other words, there were fifteen instances where IDWR assigned the same claim number to two separate springs claims. As a result, each of the duplicate claim numbers listed below has two separate springs associated with that number. The duplicate claim numbers are:

69-11478	79-13828	84-11276
78-11243	79-13832	84-11703
79-13755	79-13833	85-13956
79-13826	79-13835	85-14093
79-13827	82-12051	85-14094

With four exceptions, all of the claims with duplicate claim numbers will be dismissed pursuant to the Consent Decree. For these four exceptions, one of the duplicates will be dismissed and one decreed:

- For 78-11243, the claim associated with "Barton Spring," located at Township 24N, Range 1W, Section 32, NW $\frac{1}{4}$ NW $\frac{1}{4}$ will be retained, but the claim number

will be changed to 79-14113 to reflect the correct IDWR basin location (see Clerical Corrections Section below). A draft partial decree for claim number 79-14113 is attached. For the claim 78-11243 associated with the unnamed spring located at Township 24N, Range 1W, Section 36, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, the claim will be dismissed under the proposed settlement

- For 79-13828, the claim associated with the unnamed spring located at Township 24N, Range 1E, Section 20, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ will be retained and a draft partial decree for that claim is attached. For the claim 79-13828 associated with the spring located at Township 29N, Range 2W, Section 34, NW $\frac{1}{4}$ SW $\frac{1}{4}$, the claim will be dismissed under the proposed settlement.
- For claim number 79-13755, the claim associated with the unnamed spring located at Township 27N, Range 1W, Section 20, SE $\frac{1}{4}$ NW $\frac{1}{4}$ will be retained and a draft partial decree for that claim is attached. For the claim 79-13755 associated with the unnamed spring located at Township 26N, Range 2E, Section 4, NW $\frac{1}{4}$ SW $\frac{1}{4}$, the claim will be dismissed under the proposed settlement.
- For claim number 82-12051, the claim associated with the unnamed spring located at Township 31N, Range 6E, Section 23, SE $\frac{1}{4}$ SE $\frac{1}{4}$ will be retained and a draft partial decree for that claim is attached. For the claim 82-12051 associated with the unnamed spring located at Township 27N, Range 7E, Section 22, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, the claim will be dismissed under the proposed settlement.

B. Clerical Corrections

The following clerical errors require correction:

- Claim 69-11467: Change claim number to 67-14523 to reflect correct IDWR basin location.
- Claim 77-13293: Change claim number to 82-12216 to reflect correct IDWR basin location.
- Claim 78-11243: Change claim number to 79-14113 to reflect correct IDWR basin location. Note that the Notice of Federal Claims for the Springs or Fountains claims identified two springs as claim number 78-11243. For clarification, this is the claim to "Barton Spring" located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, T24N, R1W, Boise Meridian.
- Claim 79-12822: Change claim number to 78-12230 to reflect correct IDWR basin location.
- Claim 79-12824: Change claim number to 78-12231 to reflect correct IDWR basin location.
- Claim 82-11231: Change claim number to 81-11928 to reflect correct IDWR basin location.
- Claim 82-11430: Change claim number to 79-14114 to reflect correct IDWR basin location.
- Claim 69-10914: Change location to SE $\frac{1}{4}$, NW $\frac{1}{4}$ within the same Section to reflect more accurate location information obtained since 1998.
- Claim 78-11503: Change location to SW $\frac{1}{4}$, NE $\frac{1}{4}$ within the same Section to reflect more accurate location information obtained since 1998.

- Claim 79-13820: Change location to NW¼, NE¼, SE¼ within the same Section to reflect more accurate location information obtained since 1998.
- Claim 79-12608: Change source from “Peter Ready Spring” to “Unnamed Spring” to avoid duplication in spring names.
- Claim 79-12791: Change source from “Line Bluff Spring” to “Unnamed Spring” to avoid duplication in spring names.

C. Clarification Regarding 41 Previously Withdrawn Claims

On April 28, 1998, the United States and the Nez Perce Tribe filed a *Joint Motion to File Amended Notice of Claim*. The Joint Motion sought to withdraw 41 claims – 20 Nez Perce Tribe claim numbers, the 20 corresponding Bureau of Indian Affairs claim numbers, and one Nez Perce Tribe claim number for which there was no corresponding Bureau of Indian Affairs claim number. On June 30, 1998, the SRBA Court issued the *Order Granting Joint Motion to File Amended Notice of Claim*, which granted the Joint Motion’s request to withdraw the 41 claim numbers. Despite the fact that the SRBA Court granted the Joint Motion to withdraw the 41 claim numbers via the June 1998 Order, the 41 claim numbers have not been officially dismissed. Therefore, those claim numbers are also included in Attachment 3A, the list of all instream flow claim numbers to be dismissed. To avoid any confusion, the 41 claim numbers are also listed below:

NPT CLAIM NUMBERS WITHDRAWN	BIA CLAIM NUMBERS WITHDRAWN
84-10925	84-10905
85-12303	85-12219
85-12307	85-12223
84-10937	84-10917
81-10926	81-10769
81-10968	81-10811
75-13457	75-13365
75-13464	75-13372
77-12354	77-12081
77-12431	77-12158
74-14567	74-14514
73-11739	73-11708
74-14572	74-14519
73-11746	73-11715
72-16148	72-16066
72-16151	72-16069
72-16153	72-16071
67-13383	67-13354
65-20749	65-20726
65-20758	65-20735
03-10097	N/A

Attachment 3A to Consent Decree
In re SRBA Case No. 39576; Consolidated Subcase No. 03-10022
Nez Perce Instream Flow Claims

03-10022	03-10068	65-20752	67-13389	71-10670
03-10023	03-10069	65-20753	67-13390	71-10671
03-10024	03-10070	65-20754	67-13391	71-10672
03-10025	03-10071	65-20755	67-13392	71-10673
03-10026	03-10072	65-20756	67-13393	71-10674
03-10027	03-10073	65-20757	67-13394	71-10675
03-10028	03-10074	65-20758	67-13395	71-10676
03-10029	03-10075	65-20759	67-13396	71-10677
03-10030	03-10076	67-13351	67-13397	71-10678
03-10031	03-10077	67-13352	67-13398	71-10679
03-10032	03-10078	67-13353	67-13399	71-10680
03-10033	03-10079	67-13354	67-13400	71-10681
03-10034	03-10097	67-13355	67-13401	71-10682
03-10035	65-20717	67-13356	67-13402	71-10683
03-10036	65-20718	67-13357	67-13403	71-10684
03-10037	65-20719	67-13358	67-13404	71-10685
03-10038	65-20720	67-13359	67-13405	71-10686
03-10039	65-20721	67-13360	67-13406	71-10687
03-10040	65-20722	67-13361	67-13407	71-10688
03-10041	65-20723	67-13362	69-10761	71-10689
03-10042	65-20724	67-13363	69-10762	71-10690
03-10043	65-20725	67-13364	69-10763	71-10691
03-10044	65-20726	67-13365	69-10765	71-10692
03-10045	65-20727	67-13366	69-10766	71-10693
03-10046	65-20728	67-13367	69-10769	71-10695
03-10047	65-20729	67-13368	69-10771	71-10696
03-10048	65-20730	67-13369	69-10772	71-10698
03-10049	65-20731	67-13370	69-10773	71-10699
03-10050	65-20732	67-13371	69-10775	71-10700
03-10052	65-20733	67-13372	69-10776	71-10701
03-10053	65-20734	67-13373	69-10777	71-10702
03-10054	65-20735	67-13374	69-10779	71-10703
03-10055	65-20736	67-13375	69-10780	71-10704
03-10056	65-20740	67-13376	69-10781	71-10705
03-10057	65-20741	67-13377	69-10782	71-10706
03-10058	65-20742	67-13378	69-10783	71-10707
03-10059	65-20743	67-13380	69-10784	71-10708
03-10060	65-20744	67-13381	69-10785	71-10709
03-10061	65-20745	67-13382	69-10786	71-10710
03-10062	65-20746	67-13383	69-10787	71-10711
03-10063	65-20747	67-13384	69-10788	71-10712
03-10064	65-20748	67-13385	69-10789	71-10713
03-10065	65-20749	67-13386	69-10790	71-10714
03-10066	65-20750	67-13387	71-10667	71-10715
03-10067	65-20751	67-13388	71-10668	71-10716

Attachment 3A to Consent Decree
In re SRBA Case No. 39576; Consolidated Subcase No. 03-10022
Nez Perce Instream Flow Claims

71-10717	72-16069	72-16118	72-16163	73-11717
71-10718	72-16070	72-16119	72-16164	73-11718
71-10719	72-16071	72-16120	72-16165	73-11719
71-10720	72-16072	72-16121	72-16166	73-11720
71-10721	72-16073	72-16122	72-16167	73-11721
72-16029	72-16074	72-16123	72-16168	73-11722
72-16030	72-16075	72-16124	72-16169	73-11723
72-16031	72-16076	72-16125	72-16170	73-11724
72-16032	72-16077	72-16126	72-16171	73-11725
72-16033	72-16078	72-16127	72-16172	73-11726
72-16034	72-16079	72-16128	72-16173	73-11727
72-16035	72-16080	72-16129	72-16174	73-11729
72-16036	72-16081	72-16130	72-16175	73-11730
72-16037	72-16082	72-16131	72-16176	73-11731
72-16038	72-16083	72-16132	72-16177	73-11732
72-16039	72-16084	72-16133	72-16178	73-11733
72-16040	72-16085	72-16134	72-16179	73-11734
72-16041	72-16086	72-16135	72-16180	73-11735
72-16042	72-16087	72-16136	72-16181	73-11736
72-16043	72-16088	72-16137	72-16182	73-11737
72-16044	72-16089	72-16138	72-16183	73-11738
72-16045	72-16090	72-16139	72-16184	73-11739
72-16046	72-16091	72-16140	72-16185	73-11740
72-16047	72-16092	72-16141	72-16186	73-11741
72-16048	72-16093	72-16142	72-16187	73-11742
72-16049	72-16094	72-16143	72-16188	73-11744
72-16050	72-16095	72-16144	73-11698	73-11745
72-16051	72-16096	72-16145	73-11699	73-11746
72-16052	72-16097	72-16146	73-11700	73-11747
72-16053	72-16098	72-16147	73-11701	73-11748
72-16054	72-16099	72-16148	73-11702	73-11749
72-16055	72-16100	72-16149	73-11703	73-11750
72-16056	72-16101	72-16150	73-11704	73-11751
72-16057	72-16102	72-16151	73-11705	73-11752
72-16058	72-16103	72-16152	73-11706	73-11753
72-16059	72-16104	72-16153	73-11707	73-11754
72-16060	72-16105	72-16154	73-11708	73-11755
72-16061	72-16106	72-16155	73-11709	73-11756
72-16062	72-16111	72-16156	73-11710	73-11757
72-16063	72-16112	72-16157	73-11711	73-11758
72-16064	72-16113	72-16158	73-11712	74-14468
72-16065	72-16114	72-16159	73-11713	74-14469
72-16066	72-16115	72-16160	73-11714	74-14470
72-16067	72-16116	72-16161	73-11715	74-14471
72-16068	72-16117	72-16162	73-11716	74-14472

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74-14473	74-14518	74-14564	75-13354	75-13399
74-14474	74-14519	74-14565	75-13355	75-13400
74-14475	74-14521	74-14566	75-13356	75-13401
74-14476	74-14522	74-14567	75-13357	75-13402
74-14477	74-14523	74-14568	75-13358	75-13403
74-14478	74-14524	74-14569	75-13359	75-13404
74-14479	74-14525	74-14570	75-13360	75-13405
74-14480	74-14526	74-14571	75-13361	75-13406
74-14481	74-14527	74-14572	75-13362	75-13407
74-14482	74-14528	75-13318	75-13363	75-13408
74-14483	74-14529	75-13319	75-13364	75-13410
74-14484	74-14530	75-13320	75-13365	75-13411
74-14485	74-14531	75-13321	75-13366	75-13412
74-14486	74-14532	75-13322	75-13367	75-13413
74-14487	74-14533	75-13323	75-13368	75-13414
74-14488	74-14534	75-13324	75-13369	75-13415
74-14489	74-14535	75-13325	75-13370	75-13416
74-14490	74-14536	75-13326	75-13371	75-13417
74-14491	74-14537	75-13327	75-13372	75-13418
74-14492	74-14538	75-13328	75-13373	75-13419
74-14493	74-14539	75-13329	75-13374	75-13420
74-14494	74-14540	75-13330	75-13375	75-13421
74-14495	74-14541	75-13331	75-13376	75-13422
74-14496	74-14542	75-13332	75-13377	75-13423
74-14497	74-14543	75-13333	75-13378	75-13424
74-14498	74-14544	75-13334	75-13379	75-13425
74-14499	74-14545	75-13335	75-13380	75-13426
74-14500	74-14546	75-13336	75-13381	75-13427
74-14501	74-14547	75-13337	75-13382	75-13428
74-14502	74-14548	75-13338	75-13383	75-13429
74-14503	74-14549	75-13339	75-13384	75-13430
74-14504	74-14550	75-13340	75-13385	75-13431
74-14505	74-14551	75-13341	75-13386	75-13432
74-14506	74-14552	75-13342	75-13387	75-13433
74-14507	74-14553	75-13343	75-13388	75-13434
74-14508	74-14554	75-13344	75-13389	75-13435
74-14509	74-14555	75-13345	75-13390	75-13436
74-14510	74-14556	75-13346	75-13391	75-13437
74-14511	74-14557	75-13347	75-13392	75-13438
74-14512	74-14558	75-13348	75-13393	75-13439
74-14513	74-14559	75-13349	75-13394	75-13440
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74-14515	74-14561	75-13351	75-13396	75-13442
74-14516	74-14562	75-13352	75-13397	75-13443
74-14517	74-14563	75-13353	75-13398	75-13444

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75-13445	75-13490	77-11977	77-12022	77-12067
75-13446	75-13491	77-11978	77-12023	77-12068
75-13447	75-13492	77-11979	77-12024	77-12069
75-13448	75-13493	77-11980	77-12025	77-12070
75-13449	75-13494	77-11981	77-12026	77-12071
75-13450	75-13495	77-11982	77-12027	77-12072
75-13451	75-13496	77-11983	77-12028	77-12073
75-13452	75-13497	77-11984	77-12029	77-12074
75-13453	75-13498	77-11985	77-12030	77-12075
75-13454	75-13499	77-11986	77-12031	77-12076
75-13455	75-13500	77-11987	77-12032	77-12077
75-13456	77-11943	77-11988	77-12033	77-12078
75-13457	77-11944	77-11989	77-12034	77-12079
75-13458	77-11945	77-11990	77-12035	77-12080
75-13459	77-11946	77-11991	77-12036	77-12081
75-13460	77-11947	77-11992	77-12037	77-12082
75-13461	77-11948	77-11993	77-12038	77-12083
75-13462	77-11949	77-11994	77-12039	77-12084
75-13463	77-11950	77-11995	77-12040	77-12085
75-13464	77-11951	77-11996	77-12041	77-12086
75-13465	77-11952	77-11997	77-12042	77-12087
75-13466	77-11953	77-11998	77-12043	77-12088
75-13467	77-11954	77-11999	77-12044	77-12089
75-13468	77-11955	77-12000	77-12045	77-12090
75-13469	77-11956	77-12001	77-12046	77-12091
75-13470	77-11957	77-12002	77-12047	77-12092
75-13471	77-11958	77-12003	77-12048	77-12093
75-13472	77-11959	77-12004	77-12049	77-12094
75-13473	77-11960	77-12005	77-12050	77-12095
75-13474	77-11961	77-12006	77-12051	77-12096
75-13475	77-11962	77-12007	77-12052	77-12097
75-13476	77-11963	77-12008	77-12053	77-12098
75-13477	77-11964	77-12009	77-12054	77-12099
75-13478	77-11965	77-12010	77-12055	77-12100
75-13479	77-11966	77-12011	77-12056	77-12101
75-13480	77-11967	77-12012	77-12057	77-12102
75-13481	77-11968	77-12013	77-12058	77-12103
75-13482	77-11969	77-12014	77-12059	77-12104
75-13483	77-11970	77-12015	77-12060	77-12105
75-13484	77-11971	77-12016	77-12061	77-12106
75-13485	77-11972	77-12017	77-12062	77-12107
75-13486	77-11973	77-12018	77-12063	77-12108
75-13487	77-11974	77-12019	77-12064	77-12109
75-13488	77-11975	77-12020	77-12065	77-12110
75-13489	77-11976	77-12021	77-12066	77-12111

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77-12112	77-12157	77-12202	77-12248	77-12293
77-12113	77-12158	77-12203	77-12249	77-12294
77-12114	77-12159	77-12204	77-12250	77-12295
77-12115	77-12160	77-12205	77-12251	77-12296
77-12116	77-12161	77-12206	77-12252	77-12297
77-12117	77-12162	77-12207	77-12253	77-12298
77-12118	77-12163	77-12208	77-12254	77-12299
77-12119	77-12164	77-12209	77-12255	77-12300
77-12120	77-12165	77-12210	77-12256	77-12301
77-12121	77-12166	77-12211	77-12257	77-12302
77-12122	77-12167	77-12212	77-12258	77-12303
77-12123	77-12168	77-12213	77-12259	77-12304
77-12124	77-12169	77-12214	77-12260	77-12305
77-12125	77-12170	77-12216	77-12261	77-12306
77-12126	77-12171	77-12217	77-12262	77-12307
77-12127	77-12172	77-12218	77-12263	77-12308
77-12128	77-12173	77-12219	77-12264	77-12309
77-12129	77-12174	77-12220	77-12265	77-12310
77-12130	77-12175	77-12221	77-12266	77-12311
77-12131	77-12176	77-12222	77-12267	77-12312
77-12132	77-12177	77-12223	77-12268	77-12313
77-12133	77-12178	77-12224	77-12269	77-12314
77-12134	77-12179	77-12225	77-12270	77-12315
77-12135	77-12180	77-12226	77-12271	77-12316
77-12136	77-12181	77-12227	77-12272	77-12317
77-12137	77-12182	77-12228	77-12273	77-12318
77-12138	77-12183	77-12229	77-12274	77-12319
77-12139	77-12184	77-12230	77-12275	77-12320
77-12140	77-12185	77-12231	77-12276	77-12321
77-12141	77-12186	77-12232	77-12277	77-12322
77-12142	77-12187	77-12233	77-12278	77-12323
77-12143	77-12188	77-12234	77-12279	77-12324
77-12144	77-12189	77-12235	77-12280	77-12325
77-12145	77-12190	77-12236	77-12281	77-12326
77-12146	77-12191	77-12237	77-12282	77-12327
77-12147	77-12192	77-12238	77-12283	77-12328
77-12148	77-12193	77-12239	77-12284	77-12329
77-12149	77-12194	77-12240	77-12285	77-12330
77-12150	77-12195	77-12241	77-12286	77-12331
77-12151	77-12196	77-12242	77-12287	77-12332
77-12152	77-12197	77-12243	77-12288	77-12333
77-12153	77-12198	77-12244	77-12289	77-12334
77-12154	77-12199	77-12245	77-12290	77-12335
77-12155	77-12200	77-12246	77-12291	77-12336
77-12156	77-12201	77-12247	77-12292	77-12337

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77-12338	77-12383	77-12428	77-12473	78-11131
77-12339	77-12384	77-12429	77-12474	78-11132
77-12340	77-12385	77-12430	77-12475	78-11133
77-12341	77-12386	77-12431	77-12476	78-11134
77-12342	77-12387	77-12432	77-12477	78-11135
77-12343	77-12388	77-12433	77-12478	78-11136
77-12344	77-12389	77-12434	77-12479	78-11137
77-12345	77-12390	77-12435	77-12480	78-11138
77-12346	77-12391	77-12436	77-12481	78-11139
77-12347	77-12392	77-12437	77-12482	78-11140
77-12348	77-12393	77-12438	77-12483	78-11141
77-12349	77-12394	77-12439	77-12484	78-11142
77-12350	77-12395	77-12440	77-12485	78-11143
77-12351	77-12396	77-12441	77-12486	78-11144
77-12352	77-12397	77-12442	77-12487	78-11145
77-12353	77-12398	77-12443	78-11100	78-11146
77-12354	77-12399	77-12444	78-11101	78-11147
77-12355	77-12400	77-12445	78-11102	78-11148
77-12356	77-12401	77-12446	78-11103	78-11149
77-12357	77-12402	77-12447	78-11104	78-11150
77-12358	77-12403	77-12448	78-11105	79-11897
77-12359	77-12404	77-12449	78-11106	79-11898
77-12360	77-12405	77-12450	78-11107	79-11899
77-12361	77-12406	77-12451	78-11108	79-11900
77-12362	77-12407	77-12452	78-11109	79-11901
77-12363	77-12408	77-12453	78-11110	79-11902
77-12364	77-12409	77-12454	78-11111	79-11903
77-12365	77-12410	77-12455	78-11112	79-11904
77-12366	77-12411	77-12456	78-11113	79-11905
77-12367	77-12412	77-12457	78-11114	79-11906
77-12368	77-12413	77-12458	78-11115	79-11907
77-12369	77-12414	77-12459	78-11116	79-11908
77-12370	77-12415	77-12460	78-11117	79-11909
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77-12376	77-12421	77-12466	78-11123	79-11915
77-12377	77-12422	77-12467	78-11124	79-11916
77-12378	77-12423	77-12468	78-11126	79-11917
77-12379	77-12424	77-12469	78-11127	79-11918
77-12380	77-12425	77-12470	78-11128	79-11919
77-12381	77-12426	77-12471	78-11129	79-11920
77-12382	77-12427	77-12472	78-11130	79-11921

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79-11922	79-12040	81-10712	81-10757	81-10802
79-11923	79-12041	81-10713	81-10758	81-10803
79-11924	79-12042	81-10714	81-10759	81-10804
79-11925	79-12043	81-10715	81-10760	81-10805
79-11926	79-12044	81-10716	81-10761	81-10806
79-11927	79-12045	81-10717	81-10762	81-10807
79-11928	79-12046	81-10718	81-10763	81-10808
79-11929	79-12047	81-10719	81-10764	81-10809
79-11930	79-12048	81-10720	81-10765	81-10810
79-11931	79-12049	81-10721	81-10766	81-10811
79-11932	79-12050	81-10722	81-10767	81-10812
79-11933	79-12051	81-10723	81-10768	81-10813
79-11934	79-12052	81-10724	81-10769	81-10814
79-11935	79-12053	81-10725	81-10770	81-10815
79-11936	79-12054	81-10726	81-10771	81-10816
79-11937	79-12055	81-10727	81-10772	81-10817
79-11938	79-12056	81-10728	81-10773	81-10818
79-11939	79-12057	81-10729	81-10774	81-10819
79-11940	79-12058	81-10730	81-10775	81-10820
79-11941	79-12059	81-10731	81-10776	81-10821
79-11942	79-12060	81-10732	81-10777	81-10822
79-11943	79-12061	81-10733	81-10778	81-10823
79-11944	79-12062	81-10734	81-10779	81-10824
79-11945	79-12063	81-10735	81-10780	81-10825
79-11949	79-12064	81-10736	81-10781	81-10826
79-11953	79-12065	81-10737	81-10782	81-10827
79-11955	79-12066	81-10738	81-10783	81-10828
79-11959	79-12067	81-10739	81-10784	81-10829
79-11961	79-12068	81-10740	81-10785	81-10830
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79-11964	79-12070	81-10742	81-10787	81-10832
79-12026	79-12071	81-10743	81-10788	81-10833
79-12027	79-12072	81-10744	81-10789	81-10834
79-12028	79-12073	81-10745	81-10790	81-10835
79-12029	79-12074	81-10746	81-10791	81-10836
79-12030	79-12075	81-10747	81-10792	81-10837
79-12031	79-12076	81-10748	81-10793	81-10838
79-12032	79-12077	81-10749	81-10794	81-10839
79-12033	79-12078	81-10750	81-10795	81-10840
79-12034	79-12079	81-10751	81-10796	81-10841
79-12035	79-12080	81-10752	81-10797	81-10842
79-12036	79-12081	81-10753	81-10798	81-10843
79-12037	81-10709	81-10754	81-10799	81-10844
79-12038	81-10710	81-10755	81-10800	81-10845
79-12039	81-10711	81-10756	81-10801	81-10846

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81-10847	81-10893	81-10938	81-10983	82-11024
81-10848	81-10894	81-10939	81-10984	82-11025
81-10849	81-10895	81-10940	81-10985	82-11026
81-10850	81-10896	81-10941	81-10986	82-11027
81-10851	81-10897	81-10942	81-10987	82-11028
81-10852	81-10898	81-10943	81-10988	82-11029
81-10853	81-10899	81-10944	81-10989	82-11030
81-10854	81-10900	81-10945	81-10990	82-11031
81-10855	81-10901	81-10946	81-10991	82-11032
81-10856	81-10902	81-10947	81-10992	82-11033
81-10857	81-10903	81-10948	81-10993	82-11034
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81-10859	81-10905	81-10950	81-10995	82-11036
81-10860	81-10906	81-10951	81-10996	82-11037
81-10861	81-10907	81-10952	81-10997	82-11038
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81-10863	81-10909	81-10954	81-10999	82-11040
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81-10867	81-10912	81-10957	81-11002	82-11043
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81-10878	81-10923	81-10968	81-11013	82-11056
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81-10884	81-10929	81-10974	81-11019	82-11062
81-10885	81-10930	81-10975	81-11020	82-11063
81-10886	81-10931	81-10976	81-11021	82-11064
81-10887	81-10932	81-10977	81-11051	82-11065
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81-10891	81-10936	81-10981	82-11022	82-11069
81-10892	81-10937	81-10982	82-11023	82-11070

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82-11071	83-11064	83-11109	83-11155	83-11200
82-11072	83-11065	83-11110	83-11156	83-11201
82-11073	83-11066	83-11111	83-11157	83-11202
82-11074	83-11067	83-11112	83-11158	83-11203
82-11075	83-11068	83-11113	83-11159	83-11204
82-11076	83-11069	83-11114	83-11160	83-11205
82-11077	83-11070	83-11115	83-11161	83-11206
82-11078	83-11071	83-11116	83-11162	83-11207
82-11079	83-11072	83-11117	83-11163	83-11208
82-11080	83-11073	83-11118	83-11164	83-11209
82-11081	83-11074	83-11119	83-11165	83-11210
82-11082	83-11075	83-11120	83-11166	83-11211
82-11083	83-11076	83-11121	83-11167	83-11212
82-11084	83-11077	83-11122	83-11168	83-11213
82-11085	83-11078	83-11123	83-11169	83-11214
83-11033	83-11079	83-11124	83-11170	83-11215
83-11034	83-11080	83-11125	83-11171	83-11216
83-11035	83-11081	83-11126	83-11172	83-11217
83-11036	83-11082	83-11127	83-11173	83-11218
83-11037	83-11083	83-11128	83-11174	83-11219
83-11039	83-11084	83-11129	83-11175	83-11220
83-11040	83-11085	83-11130	83-11176	83-11221
83-11041	83-11086	83-11131	83-11177	83-11222
83-11042	83-11087	83-11132	83-11178	83-11223
83-11043	83-11088	83-11133	83-11179	83-11224
83-11044	83-11089	83-11134	83-11180	83-11225
83-11045	83-11090	83-11135	83-11181	83-11226
83-11046	83-11091	83-11136	83-11182	83-11227
83-11047	83-11092	83-11137	83-11183	83-11228
83-11048	83-11093	83-11138	83-11184	83-11229
83-11049	83-11094	83-11139	83-11185	83-11230
83-11050	83-11095	83-11140	83-11186	83-11231
83-11051	83-11096	83-11142	83-11187	83-11232
83-11052	83-11097	83-11143	83-11188	83-11233
83-11053	83-11098	83-11144	83-11189	83-11234
83-11054	83-11099	83-11145	83-11190	83-11235
83-11055	83-11100	83-11146	83-11191	83-11236
83-11056	83-11101	83-11147	83-11192	83-11237
83-11057	83-11102	83-11148	83-11193	83-11238
83-11058	83-11103	83-11149	83-11194	83-11239
83-11059	83-11104	83-11150	83-11195	83-11240
83-11060	83-11105	83-11151	83-11196	83-11241
83-11061	83-11106	83-11152	83-11197	83-11242
83-11062	83-11107	83-11153	83-11198	83-11243
83-11063	83-11108	83-11154	83-11199	83-11244

Attachment 3A to Consent Decree
In re SRBA Case No. 39576; Consolidated Subcase No. 03-10022
Nez Perce Instream Flow Claims

83-11245	85-12189	85-12234	85-12292	85-12337
83-11246	85-12190	85-12235	85-12293	85-12338
83-11247	85-12191	85-12236	85-12294	85-12339
83-11248	85-12192	85-12237	85-12295	85-12340
83-11249	85-12193	85-12238	85-12296	85-12341
83-11938	85-12194	85-12239	85-12297	85-12342
84-10904	85-12195	85-12240	85-12298	86-10863
84-10905	85-12196	85-12241	85-12299	86-10864
84-10906	85-12197	85-12242	85-12300	86-10865
84-10907	85-12198	85-12243	85-12301	86-10866
84-10908	85-12199	85-12244	85-12302	86-10867
84-10909	85-12200	85-12245	85-12303	86-10868
84-10910	85-12201	85-12246	85-12304	86-10869
84-10911	85-12202	85-12247	85-12305	86-10870
84-10912	85-12203	85-12248	85-12306	86-10871
84-10913	85-12204	85-12249	85-12307	86-10872
84-10914	85-12205	85-12250	85-12308	86-10873
84-10915	85-12206	85-12251	85-12309	86-10874
84-10916	85-12207	85-12252	85-12310	86-10875
84-10917	85-12208	85-12253	85-12311	86-10876
84-10918	85-12209	85-12254	85-12312	86-10877
84-10919	85-12210	85-12255	85-12313	86-10878
84-10920	85-12211	85-12259	85-12314	86-10879
84-10921	85-12212	85-12262	85-12315	86-10880
84-10922	85-12213	85-12269	85-12316	86-10881
84-10924	85-12214	85-12272	85-12317	86-10882
84-10925	85-12215	85-12273	85-12318	86-10883
84-10926	85-12216	85-12274	85-12319	86-10884
84-10927	85-12217	85-12275	85-12320	86-10885
84-10928	85-12218	85-12276	85-12321	86-10886
84-10929	85-12219	85-12277	85-12322	86-10887
84-10930	85-12220	85-12278	85-12323	86-10888
84-10931	85-12221	85-12279	85-12324	86-10889
84-10932	85-12222	85-12280	85-12325	86-10890
84-10933	85-12223	85-12281	85-12326	86-10892
84-10934	85-12224	85-12282	85-12327	86-10893
84-10935	85-12225	85-12283	85-12328	86-10894
84-10936	85-12226	85-12284	85-12329	86-10895
84-10937	85-12227	85-12285	85-12330	86-10896
84-10938	85-12228	85-12286	85-12331	86-10897
84-10939	85-12229	85-12287	85-12332	86-10898
84-10940	85-12230	85-12288	85-12333	86-10899
84-10941	85-12231	85-12289	85-12334	86-10900
84-10942	85-12232	85-12290	85-12335	86-10901
85-12188	85-12233	85-12291	85-12336	86-10902

Attachment 3A to Consent Decree
In re SRBA Case No. 39576; Consolidated Subcase No. 03-10022
Nez Perce Instream Flow Claims

86-10903
86-10904
86-10905
86-10906
86-10907
86-10908
86-10909
86-10910
86-10911
86-10912
86-10913
86-10914
86-10915
86-10916
86-10917
86-10918
86-10919

Attachment 3B to Consent Decree

In re SRBA Case No. 39576; Consolidated Subcase No. 67-13701

US' Claims to Spring and Fountains as trustee for the benefit of the Nez Perce Tribe

69-10824	78-11243	78-12065	79-12285	79-12334	79-12397
69-10872	78-11245	79-12225	79-12288	79-12335	79-12399
69-10877	78-11246	79-12226	79-12289	79-12336	79-12400
69-10878	78-11255	79-12227	79-12290	79-12337	79-12401
69-10884	78-11256	79-12228	79-12291	79-12338	79-12402
69-10885	78-11258	79-12229	79-12292	79-12339	79-12403
69-10887	78-11259	79-12230	79-12293	79-12340	79-12404
69-10895	78-11308	79-12231	79-12294	79-12341	79-12405
69-10935	78-11322	79-12232	79-12295	79-12343	79-12407
69-10971	78-11331	79-12233	79-12296	79-12344	79-12410
69-10972	78-11334	79-12235	79-12297	79-12345	79-12417
69-10973	78-11335	79-12236	79-12298	79-12346	79-12418
69-10974	78-11338	79-12237	79-12299	79-12347	79-12419
69-10975	78-11339	79-12238	79-12300	79-12348	79-12421
69-10976	78-11345	79-12239	79-12301	79-12349	79-12422
69-10977	78-11346	79-12240	79-12302	79-12351	79-12424
69-11471	78-11347	79-12241	79-12303	79-12352	79-12425
69-11474	78-11348	79-12242	79-12305	79-12359	79-12426
77-13333	78-11350	79-12243	79-12306	79-12360	79-12427
77-13334	78-11388	79-12245	79-12307	79-12361	79-12430
77-13361	78-11389	79-12246	79-12308	79-12362	79-12431
77-13364	78-11401	79-12249	79-12309	79-12363	79-12432
77-13371	78-11404	79-12250	79-12310	79-12364	79-12433
77-13387	78-11412	79-12251	79-12311	79-12365	79-12434
77-13389	78-11414	79-12252	79-12312	79-12366	79-12435
77-13391	78-11418	79-12253	79-12313	79-12367	79-12438
77-13392	78-11428	79-12254	79-12314	79-12368	79-12439
77-13395	78-11434	79-12255	79-12315	79-12369	79-12440
77-13403	78-11435	79-12256	79-12316	79-12370	79-12441
77-13406	78-11482	79-12257	79-12317	79-12374	79-12443
77-13410	78-11483	79-12258	79-12318	79-12375	79-12444
77-13439	78-11487	79-12259	79-12319	79-12376	79-12445
77-13440	78-11490	79-12260	79-12320	79-12377	79-12447
77-13441	78-11496	79-12263	79-12321	79-12378	79-12448
77-13956	78-11504	79-12266	79-12322	79-12379	79-12449
77-13959	78-11521	79-12270	79-12323	79-12380	79-12452
77-13960	78-11531	79-12271	79-12325	79-12381	79-12453
77-13985	78-12033	79-12272	79-12326	79-12385	79-12455
77-14001	78-12034	79-12275	79-12327	79-12386	79-12457
77-14018	78-12035	79-12276	79-12328	79-12390	79-12458
77-14019	78-12038	79-12277	79-12329	79-12392	79-12459
77-14020	78-12039	79-12279	79-12330	79-12393	79-12460
77-14021	78-12042	79-12281	79-12331	79-12394	79-12461
77-14033	78-12046	79-12282	79-12332	79-12395	79-12462
78-11240	78-12052	79-12283	79-12333	79-12396	79-12463

Attachment 3B to Consent Decree

In re SRBA Case No. 39576; Consolidated Subcase No. 67-13701

US' Claims to Spring and Fountains as trustee for the benefit of the Nez Perce Tribe

79-12464	79-12514	79-12580	79-12790	79-13812	81-11488
79-12466	79-12515	79-12581	79-12792	79-13814	81-11489
79-12467	79-12519	79-12585	79-12795	79-13818	81-11490
79-12468	79-12520	79-12587	79-12799	79-13819	81-11492
79-12469	79-12521	79-12589	79-12800	79-13826	81-11493
79-12470	79-12522	79-12590	79-12804	79-13827	81-11494
79-12471	79-12523	79-12591	79-12805	79-13832	81-11495
79-12472	79-12525	79-12592	79-12806	79-13833	81-11496
79-12473	79-12526	79-12594	79-12808	79-13835	81-11497
79-12475	79-12529	79-12595	79-12823	79-2234	81-11498
79-12478	79-12531	79-12596	79-12825	81-11417	81-11501
79-12479	79-12532	79-12600	79-12844	81-11418	81-11502
79-12480	79-12533	79-12603	79-12846	81-11419	81-11503
79-12481	79-12534	79-12618	79-12851	81-11420	81-11506
79-12482	79-12535	79-12619	79-12852	81-11422	81-11508
79-12483	79-12536	79-12626	79-12853	81-11423	81-11510
79-12484	79-12537	79-12627	79-13696	81-11424	81-11511
79-12485	79-12538	79-12631	79-13697	81-11425	81-11513
79-12486	79-12539	79-12632	79-13698	81-11426	81-11514
79-12487	79-12540	79-12637	79-13699	81-11427	81-11515
79-12488	79-12541	79-12638	79-13700	81-11428	81-11516
79-12489	79-12542	79-12660	79-13701	81-11429	81-11517
79-12490	79-12543	79-12661	79-13702	81-11430	81-11518
79-12491	79-12544	79-12668	79-13703	81-11432	81-11519
79-12492	79-12545	79-12674	79-13704	81-11436	81-11520
79-12494	79-12546	79-12678	79-13705	81-11437	81-11521
79-12495	79-12550	79-12679	79-13706	81-11439	81-11528
79-12496	79-12551	79-12700	79-13707	81-11441	81-11529
79-12497	79-12552	79-12702	79-13735	81-11442	81-11532
79-12498	79-12553	79-12703	79-13739	81-11443	81-11533
79-12499	79-12554	79-12704	79-13740	81-11468	81-11534
79-12500	79-12555	79-12706	79-13744	81-11469	81-11538
79-12501	79-12557	79-12713	79-13780	81-11470	81-11547
79-12502	79-12559	79-12720	79-13782	81-11471	81-11548
79-12503	79-12564	79-12721	79-13798	81-11473	81-11549
79-12504	79-12565	79-12726	79-13799	81-11474	81-11550
79-12505	79-12566	79-12732	79-13800	81-11475	81-11565
79-12506	79-12567	79-12741	79-13801	81-11477	81-11856
79-12507	79-12571	79-12742	79-13802	81-11481	81-11857
79-12508	79-12572	79-12748	79-13803	81-11482	81-11858
79-12509	79-12573	79-12754	79-13804	81-11483	81-11859
79-12510	79-12574	79-12755	79-13805	81-11484	81-11860
79-12511	79-12576	79-12759	79-13808	81-11485	81-11866
79-12512	79-12577	79-12788	79-13809	81-11486	81-11867
79-12513	79-12579	79-12789	79-13811	81-11487	82-11234

Attachment 3B to Consent Decree

In re SRBA Case No. 39576; Consolidated Subcase No. 67-13701

US' Claims to Spring and Fountains as trustee for the benefit of the Nez Perce Tribe

82-11235	82-11295	82-12049	84-11071	84-11142	84-11259
82-11236	82-11296	82-12050	84-11072	84-11143	84-11267
82-11238	82-11297	83-11636	84-11073	84-11144	84-11268
82-11240	82-11302	83-11637	84-11074	84-11146	84-11271
82-11241	82-11303	83-11650	84-11075	84-11147	84-11274
82-11243	82-11304	83-11651	84-11080	84-11148	84-11275
82-11244	82-11305	83-11652	84-11081	84-11149	84-11276
82-11245	82-11306	83-11653	84-11091	84-11150	84-11276
82-11246	82-11307	83-11654	84-11092	84-11151	84-11279
82-11247	82-11308	83-11655	84-11093	84-11152	84-11282
82-11248	82-11309	83-11656	84-11094	84-11153	84-11285
82-11249	82-11310	83-11658	84-11095	84-11154	84-11288
82-11252	82-11311	83-11665	84-11096	84-11155	84-11292
82-11253	82-11312	83-11672	84-11098	84-11156	84-11306
82-11255	82-11313	83-11673	84-11099	84-11157	84-11307
82-11257	82-11314	83-11674	84-11100	84-11158	84-11308
82-11258	82-11318	83-11675	84-11101	84-11159	84-11309
82-11260	82-11319	83-11678	84-11102	84-11160	84-11314
82-11261	82-11320	83-11681	84-11103	84-11162	84-11336
82-11262	82-11321	83-11682	84-11106	84-11164	84-11337
82-11263	82-11333	83-11683	84-11107	84-11178	84-11339
82-11264	82-11338	83-11684	84-11108	84-11179	84-11341
82-11265	82-11340	83-11685	84-11109	84-11193	84-11342
82-11266	82-11342	83-11686	84-11110	84-11194	84-11343
82-11267	82-11343	83-11691	84-11111	84-11195	84-11344
82-11268	82-11344	83-11692	84-11112	84-11196	84-11345
82-11272	82-11345	83-11693	84-11113	84-11197	84-11346
82-11273	82-11346	83-11694	84-11114	84-11198	84-11347
82-11274	82-11347	83-11695	84-11115	84-11199	84-11348
82-11275	82-11349	83-11696	84-11116	84-11200	84-11349
82-11276	82-11350	83-11697	84-11117	84-11201	84-11350
82-11279	82-11377	83-11698	84-11118	84-11205	84-11351
82-11281	82-11378	83-11923	84-11126	84-11206	84-11352
82-11282	82-11379	84-11053	84-11127	84-11207	84-11353
82-11283	82-11391	84-11056	84-11128	84-11208	84-11359
82-11284	82-11393	84-11057	84-11130	84-11246	84-11360
82-11285	82-11394	84-11059	84-11131	84-11247	84-11361
82-11286	82-11395	84-11060	84-11132	84-11249	84-11376
82-11287	82-11416	84-11061	84-11133	84-11252	84-11377
82-11288	82-11417	84-11062	84-11136	84-11253	84-11378
82-11289	82-11420	84-11064	84-11137	84-11254	84-11379
82-11290	82-11421	84-11066	84-11138	84-11255	84-11380
82-11291	82-12037	84-11067	84-11139	84-11256	84-11381
82-11292	82-12047	84-11068	84-11140	84-11257	84-11385
82-11293	82-12048	84-11069	84-11141	84-11258	84-11386

Attachment 3B to Consent Decree

In re SRBA Case No. 39576; Consolidated Subcase No. 67-13701

US' Claims to Spring and Fountains as trustee for the benefit of the Nez Perce Tribe

84-11387	84-12086	85-13407	85-13810	85-13884	85-14006
84-11388	85-12262	85-13408	85-13811	85-13885	85-14007
84-11389	85-13030	85-13410	85-13812	85-13886	85-14008
84-11390	85-13060	85-13411	85-13813	85-13887	85-14009
84-11391	85-13236	85-13412	85-13814	85-13888	85-14010
84-11392	85-13237	85-13413	85-13815	85-13889	85-14011
84-11393	85-13238	85-13507	85-13816	85-13890	85-14012
84-11394	85-13239	85-13508	85-13817	85-13891	85-14013
84-11395	85-13240	85-13509	85-13818	85-13892	85-14014
84-11431	85-13241	85-13510	85-13819	85-13893	85-14018
84-11442	85-13242	85-13511	85-13820	85-13894	85-14019
84-11443	85-13245	85-13512	85-13821	85-13905	85-14020
84-11444	85-13247	85-13513	85-13822	85-13909	85-14021
84-11445	85-13248	85-13514	85-13823	85-13927	85-14022
84-11446	85-13249	85-13515	85-13824	85-13928	85-14023
84-11447	85-13250	85-13517	85-13825	85-13933	85-14024
84-11448	85-13251	85-13518	85-13826	85-13948	85-14029
84-11449	85-13252	85-13519	85-13827	85-13951	85-14030
84-11450	85-13253	85-13520	85-13828	85-13953	85-14031
84-11451	85-13254	85-13521	85-13829	85-13955	85-14032
84-11469	85-13255	85-13522	85-13830	85-13956	85-14033
84-11470	85-13257	85-13523	85-13831	85-13956	85-14036
84-11471	85-13262	85-13524	85-13832	85-13958	85-14038
84-11472	85-13264	85-13526	85-13833	85-13959	85-14043
84-11473	85-13265	85-13528	85-13835	85-13961	85-14044
84-11474	85-13266	85-13529	85-13836	85-13963	85-14045
84-11475	85-13272	85-13530	85-13837	85-13977	85-14046
84-11476	85-13383	85-13531	85-13838	85-13978	85-14047
84-11477	85-13384	85-13532	85-13839	85-13979	85-14054
84-12069	85-13385	85-13535	85-13840	85-13980	85-14055
84-12070	85-13386	85-13541	85-13841	85-13985	85-14056
84-12071	85-13387	85-13542	85-13842	85-13986	85-14057
84-12072	85-13388	85-13543	85-13843	85-13987	85-14058
84-12073	85-13389	85-13738	85-13844	85-13988	85-14059
84-12074	85-13390	85-13739	85-13845	85-13989	85-14060
84-12075	85-13391	85-13771	85-13846	85-13990	85-14061
84-12076	85-13392	85-13800	85-13847	85-13993	85-14062
84-12078	85-13395	85-13801	85-13848	85-13995	85-14063
84-12079	85-13396	85-13802	85-13849	85-13998	85-14065
84-12080	85-13401	85-13803	85-13850	85-13999	85-14066
84-12081	85-13402	85-13804	85-13851	85-14000	85-14068
84-12082	85-13403	85-13805	85-13852	85-14002	85-14070
84-12083	85-13404	85-13806	85-13853	85-14003	85-14072
84-12084	85-13405	85-13807	85-13856	85-14004	85-14073
84-12085	85-13406	85-13808	85-13857	85-14005	85-14074

Attachment 3B to Consent Decree

In re SRBA Case No. 39576; Consolidated Subcase No. 67-13701

US' Claims to Spring and Fountains as trustee for the benefit of the Nez Perce Tribe

85-14076	85-15282	86-11098	86-11151	86-11239	86-11372
85-14078	85-15283	86-11099	86-11152	86-11243	86-11373
85-14079	85-15285	86-11100	86-11153	86-11244	86-11380
85-14081	85-15286	86-11101	86-11154	86-11245	86-11796
85-14082	85-15287	86-11102	86-11155	86-11246	86-11797
85-14084	85-15288	86-11103	86-11156	86-11247	86-11798
85-14085	86-11048	86-11104	86-11157	86-11248	86-11799
85-14086	86-11050	86-11105	86-11158	86-11249	86-11800
85-14087	86-11053	86-11106	86-11159	86-11250	86-11801
85-14088	86-11054	86-11107	86-11161	86-11251	86-11802
85-14089	86-11055	86-11108	86-11162	86-11252	86-11803
85-14090	86-11056	86-11109	86-11163	86-11253	86-11804
85-14091	86-11057	86-11110	86-11164	86-11254	86-11805
85-14092	86-11058	86-11113	86-11165	86-11256	86-11806
85-14093	86-11059	86-11114	86-11167	86-11257	86-11807
85-14093	86-11060	86-11115	86-11168	86-11260	86-11808
85-14094	86-11061	86-11116	86-11169	86-11261	86-11809
85-14094	86-11062	86-11117	86-11170	86-11262	86-11810
85-14098	86-11063	86-11118	86-11171	86-11291	86-11811
85-14099	86-11064	86-11119	86-11172	86-11292	86-11812
85-14103	86-11065	86-11121	86-11173	86-11295	86-11813
85-14104	86-11066	86-11122	86-11174	86-11296	86-11814
85-14109	86-11067	86-11127	86-11176	86-11298	86-11815
85-14110	86-11068	86-11128	86-11177	86-11300	86-11816
85-14111	86-11069	86-11129	86-11178	86-11301	86-11817
85-14113	86-11070	86-11130	86-11179	86-11302	86-11818
85-14114	86-11075	86-11131	86-11181	86-11328	86-11819
85-14116	86-11076	86-11132	86-11183	86-11329	86-11820
85-14117	86-11078	86-11133	86-11184	86-11331	86-11821
85-14118	86-11080	86-11135	86-11185	86-11332	86-11822
85-14119	86-11081	86-11136	86-11186	86-11335	86-11823
85-15268	86-11082	86-11137	86-11187	86-11336	86-11825
85-15269	86-11083	86-11138	86-11189	86-11338	86-11826
85-15270	86-11084	86-11139	86-11191	86-11339	
85-15271	86-11085	86-11140	86-11193	86-11340	
85-15272	86-11087	86-11141	86-11194	86-11341	
85-15273	86-11088	86-11142	86-11195	86-11344	
85-15274	86-11089	86-11143	86-11196	86-11345	
85-15275	86-11090	86-11144	86-11197	86-11346	
85-15276	86-11091	86-11145	86-11198	86-11347	
85-15277	86-11092	86-11146	86-11203	86-11365	
85-15278	86-11094	86-11147	86-11204	86-11368	
85-15279	86-11095	86-11148	86-11205	86-11369	
85-15280	86-11096	86-11149	86-11206	86-11370	
85-15281	86-11097	86-11150	86-11207	86-11371	

~~CONFIDENTIAL~~
In re SRBA Case No. 39576; Consolidated Subcase No. 67-13701
Nez Perce Tribe's Claims to Spring and Fountains

67-13701	69-11479	77-13633	77-13726	77-14077	77-14122
69-11112	69-11480	77-13634	77-13727	77-14078	77-14123
69-11115	69-11481	77-13635	77-13769	77-14079	77-14124
69-11123	69-11482	77-13636	77-13774	77-14080	77-14125
69-11126	69-11483	77-13637	77-14036	77-14081	77-14126
69-11156	69-11484	77-13638	77-14037	77-14082	77-14127
69-11162	69-11485	77-13639	77-14038	77-14083	77-14128
69-11163	69-11486	77-13640	77-14039	77-14084	78-11601
69-11168	69-11487	77-13642	77-14040	77-14085	78-11603
69-11169	69-11488	77-13644	77-14041	77-14086	78-11604
69-11175	69-11489	77-13646	77-14042	77-14087	78-11606
69-11176	77-13578	77-13649	77-14043	77-14088	78-11607
69-11178	77-13586	77-13650	77-14044	77-14089	78-11609
69-11183	77-13587	77-13651	77-14045	77-14090	78-11610
69-11184	77-13591	77-13652	77-14046	77-14091	78-11614
69-11185	77-13599	77-13653	77-14047	77-14092	78-11616
69-11186	77-13600	77-13654	77-14048	77-14093	78-11617
69-11189	77-13601	77-13655	77-14049	77-14094	78-11619
69-11190	77-13602	77-13656	77-14050	77-14095	78-11620
69-11191	77-13603	77-13657	77-14051	77-14096	78-11634
69-11192	77-13604	77-13658	77-14052	77-14097	78-11635
69-11199	77-13605	77-13661	77-14053	77-14098	78-11636
69-11202	77-13606	77-13662	77-14054	77-14099	78-11639
69-11203	77-13607	77-13663	77-14055	77-14100	78-11643
69-11204	77-13608	77-13664	77-14056	77-14101	78-11644
69-11205	77-13609	77-13667	77-14057	77-14102	78-11647
69-11206	77-13610	77-13668	77-14058	77-14103	78-11648
69-11208	77-13611	77-13669	77-14059	77-14104	78-11655
69-11220	77-13612	77-13670	77-14060	77-14105	78-11656
69-11223	77-13613	77-13671	77-14061	77-14106	78-11657
69-11225	77-13614	77-13672	77-14062	77-14107	78-11658
69-11226	77-13616	77-13673	77-14063	77-14108	78-11659
69-11236	77-13617	77-13674	77-14064	77-14109	78-11660
69-11252	77-13618	77-13675	77-14065	77-14110	78-11661
69-11257	77-13619	77-13676	77-14066	77-14111	78-11663
69-11258	77-13620	77-13677	77-14067	77-14112	78-11664
69-11260	77-13623	77-13680	77-14068	77-14113	78-11669
69-11262	77-13625	77-13681	77-14069	77-14114	78-11675
69-11263	77-13626	77-13688	77-14070	77-14115	78-11683
69-11264	77-13627	77-13691	77-14071	77-14116	78-11684
69-11265	77-13628	77-13695	77-14072	77-14117	78-11685
69-11266	77-13629	77-13707	77-14073	77-14118	78-11686
69-11267	77-13630	77-13711	77-14074	77-14119	78-11687
69-11268	77-13631	77-13724	77-14075	77-14120	78-11692
69-11478	77-13632	77-13725	77-14076	77-14121	78-11695

In re SRBA Case No. 39576; Consolidated Subcase No. 67-13701
Nez Perce Tribe's Claims to Spring and Fountains

78-11696	78-11856	78-12079	79-12932	79-12991	79-13043
78-11698	78-11857	78-12080	79-12933	79-12992	79-13044
78-11699	78-11858	78-12081	79-12934	79-12993	79-13045
78-11700	78-11861	78-12082	79-12935	79-12994	79-13046
78-11701	78-11862	78-12083	79-12936	79-12995	79-13047
78-11706	78-11863	78-12084	79-12937	79-12996	79-13048
78-11707	78-11864	78-12085	79-12938	79-12997	79-13049
78-11708	78-11865	78-12086	79-12939	79-12998	79-13050
78-11709	78-11866	78-12087	79-12940	79-12999	79-13051
78-11711	78-11867	78-12088	79-12941	79-13000	79-13052
78-11720	78-11868	78-12089	79-12942	79-13001	79-13053
78-11730	78-11870	78-12090	79-12943	79-13002	79-13057
78-11734	78-11871	78-12091	79-12945	79-13003	79-13058
78-11742	78-11872	78-12092	79-12946	79-13004	79-13059
78-11746	78-11873	78-12093	79-12949	79-13005	79-13060
78-11749	78-11874	78-12094	79-12953	79-13006	79-13061
78-11750	78-11875	78-12095	79-12954	79-13007	79-13062
78-11762	78-11878	78-12096	79-12955	79-13008	79-13063
78-11763	78-11880	78-12097	79-12958	79-13009	79-13064
78-11765	78-11881	78-12098	79-12959	79-13010	79-13068
78-11767	78-11882	78-12099	79-12960	79-13011	79-13069
78-11768	78-11883	78-12100	79-12962	79-13012	79-13073
78-11773	78-11884	78-12101	79-12964	79-13013	79-13075
78-11775	78-11885	78-12102	79-12965	79-13014	79-13076
78-11776	78-11886	79-12908	79-12966	79-13015	79-13077
78-11777	78-11887	79-12909	79-12968	79-13016	79-13078
78-11778	78-11889	79-12910	79-12971	79-13017	79-13079
78-11779	78-11891	79-12911	79-12972	79-13018	79-13080
78-11780	78-11892	79-12912	79-12973	79-13019	79-13082
78-11781	78-11901	79-12913	79-12974	79-13020	79-13083
78-11782	78-11902	79-12914	79-12975	79-13021	79-13084
78-11783	78-11911	79-12915	79-12976	79-13022	79-13085
78-11789	78-11958	79-12916	79-12977	79-13023	79-13086
78-11795	78-11960	79-12917	79-12978	79-13024	79-13087
78-11796	78-12068	79-12918	79-12979	79-13026	79-13088
78-11833	78-12069	79-12919	79-12980	79-13027	79-13090
78-11834	78-12070	79-12920	79-12981	79-13028	79-13093
78-11842	78-12071	79-12921	79-12982	79-13029	79-13100
78-11843	78-12072	79-12922	79-12983	79-13030	79-13101
78-11844	78-12073	79-12923	79-12984	79-13031	79-13102
78-11848	78-12074	79-12924	79-12985	79-13032	79-13104
78-11849	78-12075	79-12925	79-12986	79-13034	79-13105
78-11850	78-12076	79-12926	79-12988	79-13035	79-13108
78-11851	78-12077	79-12928	79-12989	79-13038	79-13109
78-11852	78-12078	79-12929	79-12990	79-13042	79-13110

**In re SRBA Case No. 39576; Consolidated Subcase No. 67-13701
Nez Perce Tribe's Claims to Spring and Fountains**

79-13113	79-13169	79-13220	79-13277	79-13348	79-13442
79-13114	79-13170	79-13221	79-13278	79-13349	79-13455
79-13115	79-13171	79-13222	79-13279	79-13351	79-13456
79-13116	79-13172	79-13223	79-13281	79-13354	79-13457
79-13117	79-13173	79-13224	79-13283	79-13357	79-13459
79-13118	79-13174	79-13225	79-13286	79-13361	79-13470
79-13121	79-13175	79-13226	79-13288	79-13362	79-13471
79-13122	79-13176	79-13227	79-13289	79-13365	79-13472
79-13123	79-13177	79-13228	79-13290	79-13366	79-13473
79-13124	79-13178	79-13229	79-13291	79-13367	79-13474
79-13126	79-13179	79-13230	79-13292	79-13368	79-13475
79-13127	79-13180	79-13231	79-13293	79-13369	79-13476
79-13128	79-13181	79-13232	79-13295	79-13379	79-13478
79-13130	79-13182	79-13233	79-13298	79-13380	79-13482
79-13131	79-13183	79-13234	79-13299	79-13381	79-13483
79-13132	79-13184	79-13235	79-13300	79-13383	79-13487
79-13135	79-13185	79-13236	79-13301	79-13384	79-13488
79-13136	79-13186	79-13237	79-13302	79-13385	79-13489
79-13138	79-13187	79-13238	79-13306	79-13386	79-13491
79-13140	79-13188	79-13240	79-13309	79-13387	79-13495
79-13141	79-13189	79-13241	79-13310	79-13388	79-13505
79-13142	79-13190	79-13242	79-13311	79-13389	79-13506
79-13143	79-13191	79-13243	79-13312	79-13390	79-13507
79-13144	79-13192	79-13244	79-13314	79-13391	79-13508
79-13145	79-13193	79-13247	79-13315	79-13396	79-13509
79-13146	79-13194	79-13248	79-13316	79-13403	79-13510
79-13147	79-13195	79-13249	79-13318	79-13404	79-13511
79-13149	79-13196	79-13250	79-13319	79-13405	79-13515
79-13150	79-13197	79-13251	79-13320	79-13409	79-13516
79-13151	79-13198	79-13252	79-13321	79-13415	79-13518
79-13152	79-13202	79-13254	79-13323	79-13416	79-13527
79-13153	79-13203	79-13255	79-13324	79-13417	79-13529
79-13154	79-13204	79-13256	79-13325	79-13418	79-13534
79-13155	79-13205	79-13257	79-13327	79-13419	79-13535
79-13156	79-13206	79-13259	79-13330	79-13420	79-13536
79-13158	79-13208	79-13260	79-13331	79-13422	79-13548
79-13159	79-13209	79-13262	79-13332	79-13423	79-13555
79-13161	79-13211	79-13263	79-13333	79-13424	79-13580
79-13162	79-13212	79-13264	79-13334	79-13425	79-13582
79-13163	79-13214	79-13268	79-13335	79-13431	79-13824
79-13164	79-13215	79-13270	79-13340	79-13435	79-13825
79-13165	79-13216	79-13272	79-13341	79-13436	79-13826
79-13166	79-13217	79-13273	79-13343	79-13437	79-13827
79-13167	79-13218	79-13274	79-13344	79-13438	79-13828
79-13168	79-13219	79-13275	79-13347	79-13440	79-13829

**In re SRBA Case No. 39576; Consolidated Subcase No. 67-13701
Nez Perce Tribe's Claims to Spring and Fountains**

79-13830	79-13875	79-13920	81-11638	81-11725	82-11501
79-13831	79-13876	79-13921	81-11640	81-11726	82-11503
79-13832	79-13877	79-13922	81-11644	81-11727	82-11504
79-13833	79-13878	79-13923	81-11645	81-11728	82-11506
79-13834	79-13879	79-13924	81-11647	81-11736	82-11507
79-13835	79-13880	79-13925	81-11649	81-11737	82-11508
79-13836	79-13881	79-13926	81-11650	81-11739	82-11509
79-13837	79-13882	79-13927	81-11651	81-11740	82-11510
79-13838	79-13883	79-13928	81-11672	81-11741	82-11511
79-13839	79-13884	79-13929	81-11676	81-11742	82-11512
79-13840	79-13885	79-13930	81-11677	81-11746	82-11513
79-13841	79-13886	79-13931	81-11678	81-11755	82-11514
79-13842	79-13887	79-13932	81-11679	81-11756	82-11518
79-13843	79-13888	79-13933	81-11681	81-11757	82-11519
79-13844	79-13889	79-13934	81-11682	81-11758	82-11520
79-13845	79-13890	79-13935	81-11683	81-11773	82-11521
79-13846	79-13891	79-13936	81-11685	81-11868	82-11522
79-13847	79-13892	79-13937	81-11689	81-11869	82-11525
79-13848	79-13893	79-13938	81-11690	81-11870	82-11527
79-13849	79-13894	79-13939	81-11691	81-11871	82-11528
79-13850	79-13895	79-13940	81-11692	81-11872	82-11529
79-13851	79-13896	79-13941	81-11693	81-11873	82-11530
79-13852	79-13897	79-13942	81-11694	81-11874	82-11531
79-13853	79-13898	79-13943	81-11695	81-11875	82-11532
79-13854	79-13899	79-13944	81-11696	81-11876	82-11533
79-13855	79-13900	79-13945	81-11697	81-11877	82-11534
79-13856	79-13901	79-13946	81-11698	81-11878	82-11535
79-13857	79-13902	79-13947	81-11700	81-11879	82-11536
79-13858	79-13903	79-13948	81-11701	81-11880	82-11537
79-13859	79-13904	79-13949	81-11702	82-11477	82-11538
79-13860	79-13905	79-13950	81-11703	82-11480	82-11539
79-13861	79-13906	79-13951	81-11704	82-11481	82-11541
79-13862	79-13907	81-11619	81-11705	82-11482	82-11542
79-13863	79-13908	81-11625	81-11706	82-11484	82-11543
79-13864	79-13909	81-11626	81-11709	82-11486	82-11548
79-13865	79-13910	81-11627	81-11710	82-11487	82-11549
79-13866	79-13911	81-11628	81-11711	82-11489	82-11550
79-13867	79-13912	81-11630	81-11714	82-11490	82-11551
79-13868	79-13913	81-11631	81-11716	82-11491	82-11552
79-13869	79-13914	81-11632	81-11718	82-11492	82-11553
79-13870	79-13915	81-11633	81-11719	82-11493	82-11554
79-13871	79-13916	81-11634	81-11721	82-11494	82-11555
79-13872	79-13917	81-11635	81-11722	82-11495	82-11556
79-13873	79-13918	81-11636	81-11723	82-11498	82-11557
79-13874	79-13919	81-11637	81-11724	82-11499	82-11558

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82-11559	82-11683	82-12091	84-11495	84-11567	84-11684
82-11560	82-11696	82-12092	84-11496	84-11568	84-11685
82-11564	82-11697	82-12093	84-11498	84-11569	84-11686
82-11565	82-11698	82-12094	84-11499	84-11570	84-11694
82-11566	82-11699	83-11801	84-11500	84-11571	84-11695
82-11567	82-11701	83-11802	84-11501	84-11573	84-11698
82-11574	82-11702	83-11815	84-11502	84-11574	84-11701
82-11577	82-12053	83-11816	84-11507	84-11575	84-11702
82-11579	82-12054	83-11817	84-11508	84-11576	84-11703
82-11582	82-12055	83-11818	84-11518	84-11577	84-11703
82-11584	82-12056	83-11819	84-11519	84-11578	84-11706
82-11586	82-12057	83-11820	84-11520	84-11579	84-11709
82-11588	82-12058	83-11821	84-11521	84-11580	84-11712
82-11589	82-12059	83-11823	84-11522	84-11581	84-11715
82-11590	82-12060	83-11830	84-11523	84-11582	84-11719
82-11591	82-12061	83-11837	84-11525	84-11583	84-11726
82-11592	82-12062	83-11838	84-11526	84-11584	84-11733
82-11593	82-12063	83-11839	84-11527	84-11585	84-11734
82-11595	82-12064	83-11840	84-11528	84-11586	84-11735
82-11596	82-12065	83-11843	84-11529	84-11587	84-11736
82-11623	82-12066	83-11846	84-11530	84-11589	84-11741
82-11624	82-12067	83-11847	84-11533	84-11591	84-11763
82-11625	82-12068	83-11848	84-11534	84-11605	84-11764
82-11628	82-12069	83-11849	84-11535	84-11606	84-11766
82-11630	82-12070	83-11850	84-11536	84-11620	84-11768
82-11631	82-12071	83-11851	84-11537	84-11621	84-11769
82-11634	82-12072	83-11856	84-11538	84-11622	84-11770
82-11635	82-12073	83-11857	84-11539	84-11623	84-11771
82-11637	82-12074	83-11858	84-11540	84-11624	84-11772
82-11639	82-12075	83-11859	84-11541	84-11625	84-11773
82-11640	82-12076	83-11860	84-11542	84-11626	84-11774
82-11641	82-12077	83-11861	84-11543	84-11627	84-11775
82-11645	82-12078	83-11862	84-11544	84-11628	84-11776
82-11646	82-12079	83-11863	84-11545	84-11632	84-11777
82-11660	82-12080	83-11924	84-11553	84-11633	84-11778
82-11661	82-12081	84-11480	84-11554	84-11634	84-11779
82-11662	82-12082	84-11483	84-11555	84-11635	84-11780
82-11663	82-12083	84-11484	84-11557	84-11673	84-11786
82-11664	82-12084	84-11486	84-11558	84-11674	84-11787
82-11665	82-12085	84-11487	84-11559	84-11676	84-11788
82-11666	82-12086	84-11488	84-11560	84-11679	84-11803
82-11667	82-12087	84-11489	84-11563	84-11680	84-11804
82-11675	82-12088	84-11491	84-11564	84-11681	84-11805
82-11676	82-12089	84-11493	84-11565	84-11682	84-11806
82-11681	82-12090	84-11494	84-11566	84-11683	84-11807

**In re SRBA Case No. 39576; Consolidated Subcase No. 67-13701
Nez Perce Tribe's Claims to Spring and Fountains**

84-11808	84-12100	85-14476	85-14876	85-14923	85-15071
84-11812	84-12101	85-14477	85-14877	85-14924	85-15073
84-11813	84-12102	85-14478	85-14878	85-14927	85-15074
84-11814	84-12103	85-14479	85-14879	85-14928	85-15075
84-11815	84-12104	85-14481	85-14881	85-14955	85-15076
84-11816	85-14131	85-14482	85-14882	85-14956	85-15077
84-11817	85-14307	85-14483	85-14883	85-14957	85-15078
84-11818	85-14308	85-14484	85-14884	85-14958	85-15079
84-11819	85-14309	85-14578	85-14885	85-14959	85-15080
84-11820	85-14310	85-14579	85-14886	85-14960	85-15081
84-11821	85-14311	85-14580	85-14887	85-14961	85-15082
84-11822	85-14312	85-14581	85-14888	85-14962	85-15083
84-11858	85-14313	85-14582	85-14889	85-14963	85-15084
84-11869	85-14316	85-14583	85-14890	85-14964	85-15085
84-11870	85-14318	85-14584	85-14891	85-14965	85-15089
84-11871	85-14319	85-14585	85-14892	85-14974	85-15090
84-11872	85-14320	85-14586	85-14893	85-14976	85-15091
84-11873	85-14321	85-14587	85-14894	85-14998	85-15092
84-11874	85-14322	85-14588	85-14895	85-14999	85-15093
84-11875	85-14323	85-14589	85-14896	85-15001	85-15094
84-11876	85-14324	85-14590	85-14897	85-15004	85-15095
84-11877	85-14325	85-14591	85-14898	85-15019	85-15100
84-11878	85-14326	85-14592	85-14899	85-15022	85-15101
84-11896	85-14328	85-14593	85-14900	85-15024	85-15102
84-11897	85-14333	85-14594	85-14901	85-15026	85-15103
84-11898	85-14335	85-14595	85-14902	85-15027	85-15104
84-11899	85-14336	85-14597	85-14903	85-15028	85-15107
84-11900	85-14337	85-14599	85-14904	85-15029	85-15109
84-11901	85-14343	85-14600	85-14906	85-15030	85-15114
84-11902	85-14454	85-14601	85-14907	85-15032	85-15115
84-11903	85-14455	85-14602	85-14908	85-15034	85-15116
84-11904	85-14456	85-14603	85-14909	85-15048	85-15117
84-12087	85-14457	85-14606	85-14910	85-15049	85-15118
84-12088	85-14458	85-14612	85-14911	85-15050	85-15125
84-12089	85-14459	85-14613	85-14912	85-15051	85-15126
84-12090	85-14460	85-14614	85-14913	85-15056	85-15127
84-12091	85-14461	85-14808	85-14914	85-15057	85-15128
84-12092	85-14462	85-14809	85-14915	85-15058	85-15129
84-12093	85-14463	85-14810	85-14916	85-15059	85-15130
84-12094	85-14466	85-14842	85-14917	85-15060	85-15131
84-12095	85-14467	85-14871	85-14918	85-15061	85-15132
84-12096	85-14472	85-14872	85-14919	85-15064	85-15133
84-12097	85-14473	85-14873	85-14920	85-15066	85-15134
84-12098	85-14474	85-14874	85-14921	85-15069	85-15136
84-12099	85-14475	85-14875	85-14922	85-15070	85-15137

In re SRBA Case No. 39576; Consolidated Subcase No. 67-13701
Nez Perce Tribe's Claims to Spring and Fountains

85-15139	85-15298	86-11451	86-11505	86-11558	86-11707
85-15141	85-15299	86-11452	86-11506	86-11559	86-11708
85-15143	85-15300	86-11453	86-11507	86-11564	86-11726
85-15144	85-15301	86-11455	86-11508	86-11565	86-11729
85-15145	85-15302	86-11456	86-11509	86-11566	86-11730
85-15147	85-15303	86-11457	86-11510	86-11567	86-11731
85-15149	85-15304	86-11458	86-11511	86-11568	86-11732
85-15150	85-15305	86-11459	86-11512	86-11600	86-11733
85-15152	85-15306	86-11460	86-11513	86-11604	86-11734
85-15153	85-15307	86-11461	86-11514	86-11605	86-11741
85-15155	85-15308	86-11462	86-11515	86-11606	86-11827
85-15156	85-15309	86-11463	86-11516	86-11607	86-11828
85-15157	86-11409	86-11464	86-11517	86-11608	86-11829
85-15158	86-11411	86-11465	86-11518	86-11609	86-11830
85-15159	86-11412	86-11466	86-11519	86-11610	86-11831
85-15160	86-11414	86-11467	86-11520	86-11611	86-11832
85-15161	86-11415	86-11468	86-11522	86-11612	86-11833
85-15162	86-11416	86-11469	86-11523	86-11613	86-11834
85-15163	86-11417	86-11470	86-11524	86-11614	86-11835
85-15164	86-11418	86-11471	86-11525	86-11615	86-11836
85-15165	86-11419	86-11474	86-11526	86-11617	86-11837
85-15167	86-11420	86-11475	86-11528	86-11618	86-11838
85-15168	86-11421	86-11476	86-11529	86-11621	86-11839
85-15169	86-11422	86-11477	86-11530	86-11622	86-11840
85-15170	86-11423	86-11478	86-11531	86-11623	86-11841
85-15174	86-11424	86-11479	86-11532	86-11652	86-11842
85-15175	86-11425	86-11480	86-11533	86-11653	86-11843
85-15180	86-11426	86-11482	86-11534	86-11656	86-11844
85-15181	86-11427	86-11483	86-11535	86-11657	86-11845
85-15182	86-11428	86-11488	86-11537	86-11659	86-11846
85-15184	86-11429	86-11489	86-11538	86-11661	86-11847
85-15185	86-11430	86-11490	86-11539	86-11662	86-11848
85-15187	86-11431	86-11491	86-11540	86-11663	86-11849
85-15188	86-11436	86-11492	86-11542	86-11689	86-11850
85-15189	86-11437	86-11493	86-11544	86-11690	86-11851
85-15190	86-11439	86-11494	86-11545	86-11692	86-11852
85-15289	86-11441	86-11496	86-11546	86-11693	86-11853
85-15290	86-11442	86-11497	86-11547	86-11696	86-11854
85-15291	86-11443	86-11498	86-11548	86-11697	86-11855
85-15292	86-11444	86-11499	86-11550	86-11699	86-11856
85-15293	86-11445	86-11500	86-11552	86-11700	86-11857
85-15294	86-11446	86-11501	86-11554	86-11701	
85-15295	86-11448	86-11502	86-11555	86-11702	
85-15296	86-11449	86-11503	86-11556	86-11705	
85-15297	86-11450	86-11504	86-11557	86-11706	

done

NEZ PERCE MULTI USE CLAIMS

Subcase Nos:

81-11917	85-15565	86-11956
81-11929	85-15566	
81-11930	85-15567	
81-11931	85-15568	
81-11932	85-15569	
81-11933	85-15570	
82-12120	85-15571	
82-12217	85-15572	
82-12218	85-15573	
82-12219	85-15574	
83-11941	85-15575	
83-11944	85-15576	
84-12177	85-15577	
84-12205	85-15578	
84-12206	85-15579	
84-12207	85-15580	
84-12208	85-15581	
84-12209	85-15582	
84-12210	85-15583	
84-12211	85-15584	
84-12212	85-15585	
84-12213	85-15586	
84-12214	85-15587	
85-15456	85-15588	
85-15457	85-15589	
85-15458	85-15590	
85-15459	85-15591	
85-15460	85-15592	
85-15461	85-15593	
85-15462	85-15594	
85-15545	85-15595	
85-15546	85-15596	
85-15547	85-15597	
85-15548	85-15627	
85-15549	85-15628	
85-15550	85-15629	
85-15551	85-15630	
85-15552	85-15631	
85-15553	85-15632	
85-15554	86-11926	
85-15555	86-11946	
85-15556	86-11947	
85-15557	86-11948	
85-15558	86-11949	
85-15559	86-11950	
85-15560	86-11951	
85-15561	86-11952	
85-15562	86-11953	
85-15563	86-11954	
85-15564	86-11955	

(Subcase list: NPMULTIUSE)
9/12/06

done

Subcase Nos:

67-13514	77-13323	77-13426	77-13993	78-11296	78-11517
67-14523	77-13324	77-13442	77-13994	78-11297	78-11519
69-10821	77-13325	77-13484	77-13995	78-11298	78-11520
69-10832	77-13326	77-13489	77-13996	78-11299	78-11522
69-10835	77-13327	77-13943	77-13997	78-11300	78-11523
69-10865	77-13328	77-13944	77-13998	78-11302	78-11524
69-10871	77-13329	77-13945	77-13999	78-11303	78-11525
69-10892	77-13331	77-13946	77-14000	78-11314	78-11526
69-10893	77-13332	77-13947	77-14002	78-11323	78-11528
69-10894	77-13335	77-13948	77-14003	78-11324	78-11530
69-10898	77-13338	77-13949	77-14004	78-11325	78-11540
69-10899	77-13340	77-13950	77-14005	78-11326	78-11541
69-10900	77-13341	77-13951	77-14006	78-11337	78-11550
69-10901	77-13342	77-13952	77-14007	78-11340	78-11597
69-10908	77-13343	77-13953	77-14008	78-11359	78-11599
69-10911	77-13344	77-13954	77-14009	78-11369	78-12036
69-10912	77-13345	77-13955	77-14010	78-11373	78-12037
69-10913	77-13346	77-13957	77-14011	78-11381	78-12040
69-10914	77-13347	77-13958	77-14012	78-11385	78-12041
69-10915	77-13348	77-13961	77-14013	78-11402	78-12043
69-10917	77-13349	77-13962	77-14014	78-11406	78-12044
69-10929	77-13350	77-13963	77-14015	78-11407	78-12045
69-10932	77-13351	77-13964	77-14016	78-11415	78-12047
69-10934	77-13352	77-13965	77-14017	78-11416	78-12048
69-10945	77-13353	77-13966	77-14022	78-11417	78-12049
69-10961	77-13354	77-13967	77-14023	78-11419	78-12050
69-10966	77-13355	77-13968	77-14024	78-11420	78-12051
69-10967	77-13357	77-13969	77-14025	78-11421	78-12053
69-10969	77-13359	77-13970	77-14026	78-11422	78-12054
69-11466	77-13365	77-13971	77-14027	78-11472	78-12055
69-11468	77-13366	77-13972	77-14028	78-11473	78-12056
69-11469	77-13367	77-13973	77-14029	78-11481	78-12057
69-11470	77-13368	77-13974	77-14030	78-11488	78-12058
69-11472	77-13369	77-13975	77-14031	78-11489	78-12059
69-11473	77-13370	77-13976	77-14032	78-11491	78-12060
69-11475	77-13372	77-13977	77-14034	78-11495	78-12061
69-11476	77-13373	77-13978	77-14035	78-11497	78-12062
69-11477	77-13376	77-13979	78-11248	78-11500	78-12063
77-13301	77-13377	77-13980	78-11249	78-11501	78-12064
77-13302	77-13378	77-13981	78-11253	78-11502	78-12066
77-13306	77-13379	77-13982	78-11273	78-11503	78-12067
77-13314	77-13382	77-13983	78-11274	78-11505	79-12230
77-13315	77-13383	77-13984	78-11275	78-11506	79-12231
77-13316	77-13384	77-13986	78-11278	78-11507	79-12355
77-13317	77-13385	77-13987	78-11282	78-11509	79-12476
77-13318	77-13386	77-13988	78-11283	78-11510	79-12493
77-13319	77-13388	77-13989	78-11286	78-11511	79-12528
77-13320	77-13390	77-13990	78-11287	78-11512	79-12547
77-13321	77-13396	77-13991	78-11294	78-11513	79-12548
77-13322	77-13422	77-13992	78-11295	78-11514	79-12549

Subcase Nos:

79-12558	79-12722	79-13736	79-13791	82-11453
79-12560	79-12733	79-13737	79-13792	82-11455
79-12561	79-12734	79-13738	79-13793	82-11456
79-12568	79-12735	79-13741	79-13794	82-12011
79-12569	79-12736	79-13742	79-13795	82-12012
79-12598	79-12737	79-13743	79-13796	82-12013
79-12605	79-12739	79-13745	79-13797	82-12014
79-12606	79-12740	79-13746	79-13806	82-12015
79-12607	79-12752	79-13747	79-13807	82-12016
79-12608	79-12753	79-13748	79-13810	82-12017
79-12609	79-12757	79-13749	79-13813	82-12018
79-12610	79-12772	79-13750	79-13815	82-12019
79-12612	79-12773	79-13751	79-13816	82-12020
79-12615	79-12774	79-13752	79-13817	82-12021
79-12616	79-12776	79-13753	79-13820	82-12022
79-12617	79-12787	79-13754	79-13821	82-12023
79-12623	79-12791	79-13755	79-13822	82-12024
79-12628	79-12793	79-13756	79-13823	82-12025
79-12629	79-12812	79-13757	79-13828	82-12026
79-12633	79-12865	79-13758	79-14113	82-12027
79-12635	79-12872	79-13759	79-14114	82-12028
79-12636	79-12897	79-13760	81-11411	82-12029
79-12640	79-12899	79-13761	81-11464	82-12030
79-12641	79-13708	79-13762	81-11855	82-12031
79-12642	79-13709	79-13763	81-11861	82-12032
79-12644	79-13710	79-13764	81-11862	82-12033
79-12647	79-13711	79-13765	81-11863	82-12034
79-12648	79-13712	79-13766	81-11864	82-12035
79-12649	79-13713	79-13767	81-11865	82-12036
79-12650	79-13714	79-13768	81-11928	82-12038
79-12651	79-13715	79-13769	82-11328	82-12039
79-12652	79-13716	79-13770	82-11331	82-12040
79-12657	79-13717	79-13771	82-11336	82-12041
79-12658	79-13718	79-13772	82-11382	82-12042
79-12664	79-13719	79-13773	82-11384	82-12043
79-12665	79-13720	79-13774	82-11385	82-12044
79-12666	79-13721	79-13775	82-11388	82-12045
79-12671	79-13722	79-13776	82-11389	82-12046
79-12682	79-13723	79-13777	82-11399	82-12051
79-12683	79-13724	79-13778	82-11400	82-12052
79-12684	79-13725	79-13779	82-11414	82-12216
79-12685	79-13726	79-13781	82-11415	84-11299
79-12686	79-13727	79-13783	82-11418	84-12077
79-12696	79-13728	79-13784	82-11419	85-13516
79-12697	79-13729	79-13785	82-11429	85-13737
79-12698	79-13730	79-13786	82-11435	85-15284
79-12701	79-13731	79-13787	82-11437	86-11051
79-12705	79-13732	79-13788	82-11450	86-11824
79-12707	79-13733	79-13789	82-11451	
79-12708	79-13734	79-13790	82-11452	

draw

IDAHO WATER RESOURCE BOARD CLAIMS

Subcase Nos:

71-10886	77-14190	81-11948	83-11951	85-15626
71-10887	77-14191	81-11949	83-11952	86-11957
71-10888	77-14192	81-11950	83-11953	86-11958
71-10889	77-14193	81-11951	83-11954	86-11959
71-10890	77-14194	81-11952	83-11955	86-11960
71-10891	77-14195	81-11953	83-11956	
71-10892	77-14196	81-11954	83-11957	
71-10893	77-14197	81-11955	83-11958	
71-10894	77-14198	81-11956	83-11959	
71-10895	77-14199	81-11957	83-11960	
71-10896	77-14200	81-11958	83-11961	
72-16664	77-14201	81-11959	84-12215	
72-16665	77-14202	81-11960	84-12216	
72-16666	77-14203	81-11961	84-12217	
72-16667	77-14204	81-11962	84-12218	
72-16668	77-14205	81-11963	84-12219	
72-16669	77-14206	81-11964	84-12220	
72-16670	77-14207	81-11965	84-12221	
72-16671	77-14208	81-11966	84-12222	
72-16672	77-14209	81-11967	84-12223	
72-16673	77-14210	81-11968	84-12224	
75-14184	77-14211	81-11969	84-12225	
75-14185	77-14212	81-11970	85-15598	
75-14186	78-12233	81-11971	85-15599	
75-14187	78-12234	81-11972	85-15600	
75-14188	78-12235	81-11973	85-15601	
75-14189	78-12236	81-11974	85-15602	
77-14167	78-12237	81-11975	85-15603	
77-14168	79-14117	82-12220	85-15604	
77-14169	79-14118	82-12221	85-15605	
77-14170	79-14119	82-12222	85-15606	
77-14171	79-14120	82-12223	85-15607	
77-14172	79-14121	82-12224	85-15608	
77-14173	79-14122	82-12225	85-15609	
77-14174	79-14123	82-12226	85-15610	
77-14175	79-14124	82-12227	85-15611	
77-14176	81-11934	82-12228	85-15612	
77-14177	81-11935	82-12229	85-15613	
77-14178	81-11936	82-12230	85-15614	
77-14179	81-11937	82-12231	85-15615	
77-14180	81-11938	82-12232	85-15616	
77-14181	81-11939	82-12233	85-15617	
77-14182	81-11940	82-12234	85-15618	
77-14183	81-11941	82-12235	85-15619	
77-14184	81-11942	83-11945	85-15620	
77-14185	81-11943	83-11946	85-15621	
77-14186	81-11944	83-11947	85-15622	
77-14187	81-11945	83-11948	85-15623	
77-14188	81-11946	83-11949	85-15624	
77-14189	81-11947	83-11950	85-15625	

(Subcase list: IWRB)
1/05/07

PL 108-447, December 8, 2004, 118 Stat 2809

UNITED STATES PUBLIC LAWS
108th Congress - Second Session
Convening January 7, 2004

Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed

PL 108-447 (HR 4818)
December 8, 2004

CONSOLIDATED APPROPRIATIONS ACT, 2005

An Act Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2005, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Consolidated Appropriations Act, 2005”.

SEC. 2. TABLE OF CONTENTS.

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<< 1 USCA § 1 NOTE >>

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to “this Act” contained in any division of this Act shall be treated as referring only to the provisions of that division.

SEC. 4. STATEMENT OF APPROPRIATIONS.

The following sums in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2005.

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG
ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

TITLE I

AGRICULTURAL PROGRAMS

Production, Processing, and Marketing

Office of the Secretary

For necessary expenses of the Office of the Secretary of Agriculture, \$5,124,000: *Provided*, That not to exceed \$11,000 of this amount shall be available for official reception and representation expenses, not otherwise provided for, as determined by the Secretary.

Executive Operations

CHIEF ECONOMIST

For necessary expenses of the Chief Economist, including economic analysis, risk assessment, cost-benefit analysis, energy and new uses, and the functions of the World Agricultural Outlook Board, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1622g), \$10,317,000.

NATIONAL APPEALS DIVISION

For necessary expenses of the National Appeals Division, \$14,331,000.

OFFICE OF BUDGET AND PROGRAM ANALYSIS

For necessary expenses of the Office of Budget and Program Analysis, \$8,228,000.

HOMELAND SECURITY STAFF

For necessary expenses of the Homeland Security Staff, \$775,000.

Office of the Chief Information Officer

For necessary expenses of the Office of the Chief Information Officer, \$16,595,000.

Common Computing Environment

For necessary expenses to acquire a Common Computing Environment for the Natural Resources Conservation Service, the Farm and Foreign Agricultural Service, and Rural Development mission areas for information technology, systems, and services, \$125,585,000, to remain available until expended, for the capital asset acquisition of shared information technology systems, including services as authorized by 7 U.S.C. 6915-16 and 40 U.S.C. 1421-28: *Provided*, That obligation of these funds shall be consistent with the Department of Agriculture Service Center Modernization Plan of the county-based agencies, and shall be with the concurrence of the Department's Chief Information Officer.

(c) ENVIRONMENTAL REVIEWS.—Notwithstanding the provisions of this section, the Village of Chickasaw must complete all appropriate environment reviews in a timely manner and to the satisfaction of the State of Ohio.

This division may be cited as the “Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2005”.

DIVISION J—OTHER MATTERS

TITLE I—MISCELLANEOUS PROVISIONS AND OFFSETS

SEC. 101. For an additional amount for the Department of Energy for the weatherization assistance program pursuant to 42 U.S.C. 6861 et seq. and notwithstanding section 3003(d)(2) of Public Law 99-509, \$230,000,000, to remain available until expended.

SEC. 102. Section 1201(a) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) is amended by striking “\$300,000,000” in the matter preceding paragraph (1) and inserting “\$500,000,000”.

SEC. 103. (a) The District of Columbia Appropriations Act, 2005 (Public Law 108-335) is amended as follows:

(1) The paragraph under the heading “CAPITAL OUTLAY” is amended by striking “For construction projects, an increase of \$1,087,649,000, of which \$839,898,000 shall be from local funds, \$38,542,000 from Highway Trust funds, \$37,000,000 from the Rights-of-way funds, \$172,209,000 from Federal grant funds, and a rescission of \$361,763,000 from local funds appropriated under this heading in prior fiscal years, for a net amount of \$725,886,000, to remain available until expended;” and inserting “For construction projects, an increase of \$1,102,039,000, of which \$839,898,000 shall be from local funds, \$38,542,000 from Highway Trust funds, \$51,390,000 from the Rights-of-way funds, \$172,209,000 from Federal grant funds, and a rescission of \$361,763,000 from local funds appropriated under this heading in prior fiscal years, for a net amount of \$740,276,000, to remain available until expended;”.

(2) Section 340(a) is amended to read as follows:

<< 20 USCA § 1155 >>

“(a) Section 603(e)(3)(E) of the Student Loan Marketing Association Reorganization Act of 1996 (20 U.S.C. 1155(e)(3)(E)) is amended—

“(1) by striking ‘and’ at the end of subclause (II);

“(2) by striking the period at the end of subclause (III) and inserting ‘; and’; and

“(3) by adding at the end the following new subclause:

“(IV) obtaining lease guarantees (in accordance with regulations promulgated by the Office of Public Charter School Financing).’.”

(3) Section 342 is amended to read as follows:

“SEC. 342. PUBLIC SCHOOL SERVICES TO CHARTER SCHOOLS. Section 2209(b) of the District of Columbia School Reform Act of 1995 (sec. 38-1802.09(b), D.C. Official Code) is amended as follows:

“(1) In paragraph (1)—

“(A) by amending subparagraph (A) to read as follows:

“(A) IN GENERAL.—Notwithstanding any other provision of law, regulation, or order relating to the disposition of a facility or property described in subparagraph (B), the Mayor and the District of Columbia government shall give a right of first offer with respect to any facility or property described in subparagraph (B) not previously purchased, leased, or transferred, or under contract to be purchased, leased, or transferred, or the subject of a previously proposed resolution submitted by the Mayor on or before December 1, 2004, to the Council of the District of Columbia seeking authority for disposition of such facility or property, or under an Exclusive Rights Agreement executed on or before December 1, 2004, to an eligible applicant whose petition to establish a public charter school has been conditionally approved under section 2203(d)(2), or a Board of Trustees, with respect to the purchase, lease, transfer, or use of a facility or property described in subparagraph (B).”;

“(B) by amending subparagraph (B)(iii) to read as follows:

“(iii) with respect to which—

“(I) the Board of Education has transferred jurisdiction to the Mayor and over which the Mayor has jurisdiction on the effective date of this subclause; or

“(II) over which the Mayor or any successor agency gains jurisdiction after the effective date of this subclause.’; and

SEC. 212. DIGITAL TRANSITION SAVINGS PROVISION.

Nothing in the dates by which requirements or other provisions are effective under this Act or the amendments made by this Act shall be construed—

- (1) to impair the authority of the Federal Communications Commission to take any action with respect to the transition by television broadcasters to the digital television service; or
- (2) to require the Commission to take any such action.

SEC. 213. AUTHORIZING BROADCAST SERVICE IN UNSERVED AREAS OF ALASKA.

Title III of the Communications Act of 1934 is amended as follows:

<< 47 USCA § 307 >>

(1) In section 307(c)(3)—

- (A) by striking “any hearing” and inserting “any administrative or judicial hearing”; and
- (B) by inserting “or section 402” after “section 405”.

<< 47 USCA § 307 >>

(2) In section 307, by adding at the end the following new subsection:

“(f) Notwithstanding any other provision of law, (1) any holder of a broadcast license may broadcast to an area of Alaska that otherwise does not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery even if another holder of a broadcast license begins broadcasting to such area, (2) any holder of a broadcast license who has broadcast to an area of Alaska that did not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery may continue providing such service even if another holder of a broadcast license begins broadcasting to such area, and shall not be fined or subject to any other penalty, forfeiture, or revocation related to providing such service including any fine, penalty, forfeiture, or revocation for continuing to operate notwithstanding orders to the contrary.”.

<< 47 USCA § 312 >>

(3) In section 312(g), by inserting before the period at the end the following: “, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated”.

TITLE X—SNAKE RIVER WATER RIGHTS ACT OF 2004

SECTION 1. SHORT TITLE.

This title may be cited as the “Snake River Water Rights Act of 2004”.

SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to resolve some of the largest outstanding issues with respect to the Snake River Basin Adjudication in Idaho in such a manner as to provide important benefits to the United States, the State of Idaho, the Nez Perce Tribe, the allottees, and citizens of the State;
- (2) to achieve a fair, equitable, and final settlement of all claims of the Nez Perce Tribe, its members, and allottees and the United States on behalf of the Tribe, its members, and allottees to the water of the Snake River Basin within Idaho;
- (3) to authorize, ratify, and confirm the Agreement among the parties submitted to the Snake River Basin Adjudication Court and provide all parties with the benefits of the Agreement;

(4) to direct—

(A) the Secretary, acting through the Bureau of Reclamation, the Bureau of Land Management, the Bureau of Indian Affairs, and other agencies; and

(B) the heads of other Federal agencies authorized to execute and perform actions necessary to carry out the Agreement;

to perform all of their obligations under the Agreement and this Act; and

(5) to authorize the actions and appropriations necessary for the United States to meet the obligations of the United States under the Agreement and this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term “Agreement” means the document titled “Mediator’s Term Sheet” dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03–10022 and SRBA Consolidated Subcase 67–13701, with all appendices to the document.

(2) ALLOTTEE.—The term “allottee” means a person that holds a beneficial real property interest in an Indian allotment that is—

(A) located within the Nez Perce Reservation; and

(B) held in trust by the United States.

(3) CONSUMPTIVE USE RESERVED WATER RIGHT.—The term “consumptive use reserved water right” means the Federal reserved water right of 50,000 acre-feet per year, as described in the Agreement, to be decreed to the United States in trust for the Tribe and the allottees, with a priority date of 1855.

(4) PARTIES.—The term “parties” means the United States, the State, the Tribe, and any other entity or person that submitted, or joined in the submission of, the Agreement to the SRBA Court on April 20, 2004.

(5) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(6) SNAKE RIVER BASIN.—The term “Snake River Basin” means the geographic area in the State described in paragraph 3 of the Commencement Order issued by the SRBA Court on November 19, 1987.

(7) SPRINGS OR FOUNTAINS WATER RIGHT.—The term “springs or fountains water right” means the Tribe’s treaty right of access to and use of water from springs or fountains on Federal public land within the area ceded by the Tribe in the Treaty of June 9, 1863 (14 Stat. 647), as recognized under the Agreement.

(8) SRBA.—The term “SRBA” means the Snake River Basin Adjudication litigation before the SRBA Court styled as *In re Snake River Basin Adjudication*, Case No. 39576.

(9) SRBA COURT.—The term “SRBA Court” means the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls in *re Snake River Basin Adjudication*.

(10) STATE.—The term “State” means the State of Idaho.

(11) TRIBE.—The term “Tribe” means the Nez Perce Tribe.

SEC. 4. APPROVAL, RATIFICATION, AND CONFIRMATION OF AGREEMENT.

(a) IN GENERAL.—Except to the extent that the Agreement conflicts with the express provisions of this Act, the Agreement is approved, ratified, and confirmed.

(b) EXECUTION AND PERFORMANCE.—The Secretary and the other heads of Federal agencies with obligations under the Agreement shall execute and perform all actions, consistent with this Act, that are necessary to carry out the Agreement.

SEC. 5. BUREAU OF RECLAMATION WATER USE.

(a) IN GENERAL.—As part of the overall implementation of the Agreement, the Secretary shall take such actions consistent with the Agreement, this Act, and water law of the State as are necessary to carry out the Snake River Flow Component of the Agreement.

(b) MITIGATION FOR CHANGE OF USE OF WATER.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$2,000,000 for a 1–time payment to local governments to mitigate for the change of use of water acquired by the Bureau of Reclamation under section III.C.6 of the Agreement.

(2) DISTRIBUTION OF FUNDS.—Funds made available under paragraph (1) shall be distributed by the Secretary to local governments in accordance with a plan provided to the Secretary by the State.

(3) PAYMENTS.—Payments by the Secretary shall be made on a pro rata basis as water rights are acquired by the Bureau of Reclamation.

SEC. 6. BUREAU OF LAND MANAGEMENT LAND TRANSFER.

(a) TRANSFER.—

(1) IN GENERAL.—The Secretary shall transfer land selected by the Tribe under paragraph (2) to the Bureau of Indian Affairs to be held in trust for the Tribe.

(2) LAND SELECTION.—The land transferred shall be selected by the Tribe from a list of parcels of land managed by the Bureau of Land Management that are available for transfer, as depicted on the map entitled “North Idaho BLM Land Eligible for Selection by the Nez Perce Tribe” dated May 2004, on file with the Director of the Bureau of Land Management, not including any parcel designated on the map as being on the Clearwater River or Lolo Creek.

(3) MAXIMUM VALUE.—The land selected by the Tribe for transfer shall be limited to a maximum value in total of not more than \$7,000,000, as determined by an independent appraisal of fair market value prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions.

(b) EXISTING RIGHTS AND USES.—

(1) IN GENERAL.—On any land selected by the Tribe under subsection (a)(2), any use in existence on the date of transfer under subsection (a) under a lease or permit with the Bureau of Land Management, including grazing, shall remain in effect until the date of expiration of the lease or permit, unless the holder of the lease or permit requests an earlier termination of the lease or permit, in which case the Secretary shall grant the request.

(2) AVAILABILITY OF AMOUNTS.—Amounts that accrue to the United States under a lease or permit described in paragraph (1) from sales, bonuses, royalties, and rentals relating to any land transferred to the Tribe under this section shall be made available to the Tribe by the Secretary in the same manner as amounts received from other land held by the Secretary in trust for the Tribe.

(c) DATE OF TRANSFER.—No land shall be transferred to the Bureau of Indian Affairs to be held in trust for the Tribe under this section until the waivers and releases under section 10(a) take effect.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary \$200,000 for 1–time payments to local governments to mitigate for the transfer of land by the Bureau of Land Management to the Tribe under section I.F of the Agreement.

(2) PAYMENTS.—Payments under paragraph (1) shall be made on a pro rata basis as parcels of land are acquired by the Tribe.

SEC. 7. WATER RIGHTS.

(a) HOLDING IN TRUST.—

(1) IN GENERAL.—The consumptive use reserved water right shall—

(A) be held in trust by the United States for the benefit of the Tribe and allottees as set forth in this section; and

(B) be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

(2) SPRINGS OR FOUNTAINS WATER RIGHT.—The springs or fountains water right of the Tribe shall be held in trust by the United States for the benefit of the Tribe.

(3) ALLOTTEES.—Allottees shall be entitled to a just and equitable allocation of the consumptive use reserved water right for irrigation purposes.

(b) WATER CODE.—

(1) ENACTMENT OF WATER CODE.—Not later than 3 years after the date of enactment of this Act, the Tribe shall enact a water code, subject to any applicable provision of law, that—

(A) manages, regulates, and controls the consumptive use reserved water right so as to allocate water for irrigation, domestic, commercial, municipal, industrial, cultural, or other uses; and

(B) includes, subject to approval of the Secretary—

(i) a due process system for the consideration and determination of any request by an allottee, or any successor in interest to an allottee, for an allocation of such water for irrigation purposes on allotted land, including a process for an appeal and adjudication of denied or disputed distribution of water and for resolution of contested administrative decisions; and

(ii) a process to protect the interests of allottees when entering into any lease under subsection (e).

(2) SECRETARIAL APPROVAL.—Any provision of the water code and any amendments to the water code that affect the rights of the allottees shall be subject to approval by the Secretary, and no such provision or amendment shall be valid until approved by the Secretary.

(3) INTERIM ADMINISTRATION.—The Secretary shall administer the consumptive use reserved water right until such date as the water code described in paragraph (2) has been enacted by the Tribe and the Secretary has approved the relevant portions of the water code.

(c) EXHAUSTION OF REMEDIES.—Before asserting any claim against the United States under section 7 of the Act of February 8, 1887 (25 U.S.C. 381) or other applicable law, a claimant shall exhaust remedies available under the Tribe's water code and Tribal law.

(d) PETITION TO THE SECRETARY.—Following exhaustion of remedies in accordance with subsection (c), a claimant may petition the Secretary for relief.

(e) SATISFACTION OF CLAIMS.—

(1) IN GENERAL.—The water rights and other benefits granted or confirmed by the Agreement and this Act shall be in full satisfaction of all claims for water rights and injuries to water rights of the allottees.

(2) SATISFACTION OF ENTITLEMENTS.—Any entitlement to water of any allottee under Federal law shall be satisfied out of the consumptive use reserved water right.

(3) COMPLETE SUBSTITUTION.—The water rights, resources, and other benefits provided by this Act are a complete substitution for any rights that may have been held by, or any claims that may have been asserted by, allottees within the exterior boundaries of the Reservation before the date of enactment of this Act.

(f) ABANDONMENT, FORFEITURE, OR NONUSE.—The consumptive use reserved water right and the springs or fountains water right shall not be subject to loss by abandonment, forfeiture, or nonuse.

(g) LEASE OF WATER.—

(1) IN GENERAL.—Subject to the water code, the Tribe, without further approval of the Secretary, may lease water to which the Tribe is entitled under the consumptive use reserved water right through any State water bank in the same manner and subject to the same rules and requirements that govern any other lessor of water to the water bank.

(2) FUNDS.—Any funds accruing to the Tribe from any lease under paragraph (1) shall be the property of the Tribe, and the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Tribe under any such lease.

SEC. 8. TRIBAL FUNDS.

(a) DEFINITION OF FUND.—In this section, the term “Fund” means—

(1) the Nez Perce Tribe Water and Fisheries Fund established under subsection (b)(1); and

(2) the Nez Perce Tribe Domestic Water Supply Fund established under subsection (b)(2).

(b) ESTABLISHMENT.—There are established in the Treasury of the United States—

(1) a fund to be known as the “Nez Perce Tribe Water and Fisheries Fund”, to be used to pay or reimburse costs incurred by the Tribe in acquiring land and water rights, restoring or improving fish habitat, or for fish production, agricultural development, cultural preservation, water resource development, or fisheries-related projects; and

(2) a fund to be known as the “Nez Perce Domestic Water Supply Fund”, to be used to pay the costs for design and construction of water supply and sewer systems for tribal communities, including a water quality testing laboratory.

(c) **MANAGEMENT OF THE FUNDS.**—The Secretary shall manage the Funds, make investments from the Funds, and make amounts available from the Funds for distribution to the Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), this Act, and the Agreement.

(d) **INVESTMENT OF THE FUNDS.**—The Secretary shall invest amounts in the Funds in accordance with—

- (1) the Act of April 1, 1880 (25 U.S.C. 161; 21 Stat. 70, chapter 41);
- (2) the first section of the Act of June 24, 1938 (25 U.S.C. 162a; 52 Stat. 1037, chapter 648); and
- (3) subsection (c).

(e) **AVAILABILITY OF AMOUNTS FROM THE FUNDS.**—Amounts made available under subsection (h) shall be available for expenditure or withdrawal only after the waivers and releases under section 10(a) take effect.

(f) **EXPENDITURES AND WITHDRAWAL.**—

(1) **TRIBAL MANAGEMENT PLAN.**—

(A) **IN GENERAL.**—The Tribe may withdraw all or part of amounts in the Funds on approval by the Secretary of a tribal management plan as described in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(B) **REQUIREMENTS.**—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan shall require that the Tribe spend any amounts withdrawn from the Funds in accordance with the purposes described in subsection (b).

(C) **ENFORCEMENT.**—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any amounts withdrawn from the Funds under the plan are used in accordance with this Act and the Agreement.

(D) **LIABILITY.**—If the Tribe exercises the right to withdraw amounts from the Funds, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts.

(2) **EXPENDITURE PLAN.**—

(A) **IN GENERAL.**—The Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts made available under subsection (h) that the Tribe does not withdraw under this subsection.

(B) **DESCRIPTION.**—The expenditure plan shall describe the manner in which, and the purposes for which, amounts of the Tribe remaining in the Funds will be used.

(C) **APPROVAL.**—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act and the Agreement.

(D) **ANNUAL REPORT.**—For each Fund, the Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(g) **NO PER CAPITA PAYMENTS.**—No part of the principal of the Funds, or of the income accruing in the Funds, shall be distributed to any member of the Tribe on a per capita basis.

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated—

(1) to the Nez Perce Tribe Water and Fisheries Fund—

- (A) for fiscal year 2007, \$7,830,000;
- (B) for fiscal year 2008, \$4,730,000;
- (C) for fiscal year 2009, \$7,380,000;
- (D) for fiscal year 2010, \$10,080,000;
- (E) for fiscal year 2011, \$11,630,000;
- (F) for fiscal year 2012, \$9,450,000; and
- (G) for fiscal year 2013, \$9,000,000; and

(2) to the Nez Perce Tribe Domestic Water Supply Fund—

- (A) for fiscal year 2007, \$5,100,000;
- (B) for fiscal year 2008, \$8,200,000;
- (C) for fiscal year 2009, \$5,550,000;
- (D) for fiscal year 2010, \$2,850,000; and
- (E) for fiscal year 2011, \$1,300,000.

SEC. 9. SALMON AND CLEARWATER RIVER BASINS HABITAT FUND.

(a) ESTABLISHMENT OF FUND.—

(1) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the “Salmon and Clearwater River Basins Habitat Fund” (referred to in this section as the “Fund”), to be administered by the Secretary.

(2) ACCOUNTS.—There is established within the Fund—

(A) an account to be known as the “Nez Perce Tribe Salmon and Clearwater River Basins Habitat Account”, which shall be administered by the Secretary for use by the Tribe subject to the same provisions for management, investment, and expenditure as the funds established by section 8; and

(B) an account to be known as the “Idaho Salmon and Clearwater River Basins Habitat Account”, which shall be administered by the Secretary and provided to the State as provided in the Agreement and this Act.

(b) USE OF THE FUND.—

(1) IN GENERAL.—The Fund shall be used to supplement amounts made available under any other law for habitat protection and restoration in the Salmon and Clearwater River Basins in Idaho, including projects and programs intended to protect and restore listed fish and their habitat in those basins, as specified in the Agreement and this Act.

(2) RELEASE OF FUNDS.—The Secretary shall release funds from the Idaho Salmon and Clearwater River Basins Habitat Account in accordance with section 6(d)(2) of the Endangered Species Act (16 U.S.C. 1535(d)(2)).

(3) NO ALLOCATION REQUIREMENT.—The use of the Fund shall not be subject to the allocation procedures under section 6(d)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1535(d)(1)).

(c) AVAILABILITY OF AMOUNTS IN THE FUND.—Amounts made available under subsection (d) shall be available for expenditure or withdrawal only after the waivers and releases under section 10(a) take effect.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) to the Nez Perce Tribe Salmon and Clearwater River Basins Habitat Account, \$2,533,334 for each of fiscal years 2007 through 2011; and

(2) to the Idaho Salmon and Clearwater River Basins Habitat Account, \$5,066,666 for each of fiscal years 2007 through 2011.

SEC. 10. TRIBAL WAIVER AND RELEASE OF CLAIMS.

(a) WAIVER AND RELEASE OF CLAIMS IN GENERAL.—

(1) CLAIMS TO WATER RIGHTS; CLAIMS FOR INJURIES TO WATER RIGHTS OR TREATY RIGHTS.—Except as otherwise provided in this Act, the United States on behalf of the Tribe and the allottees, and the Tribe, waive and release—

(A) all claims to water rights within the Snake River Basin (as defined in section 3);

(B) all claims for injuries to such water rights; and

(C) all claims for injuries to the treaty rights of the Tribe to the extent that such injuries result or resulted from flow modifications or reductions in the quantity of water available that accrued at any time up to and including the effective date of the settlement, and any continuation thereafter of any such claims, against the State, any agency or political subdivision of the State, or any person, entity, corporation, municipal corporation, or quasi-municipal corporation.

(2) CLAIMS BASED ON REDUCED WATER QUALITY OR REDUCTIONS IN WATER QUANTITY.—The United States on behalf of the Tribe and the allottees, and the Tribe, waive and release any claim, under any treaty theory, based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin against any party to the Agreement.

(3) NO FUTURE ASSERTION OF CLAIMS.—No water right claim that the Tribe or the allottees have asserted or may in the future assert outside the Snake River Basin shall require water to be supplied from the Snake River Basin to satisfy the claim.

(4) EFFECT OF WAIVERS AND RELEASES.—The waivers and releases by the United States and the Tribe under this subsection—

(A) shall be permanent and enforceable; and

(B) shall survive any subsequent termination of any component of the settlement described in the Agreement or this Act.

(5) EFFECTIVE DATE.—The waivers and releases under this subsection shall take effect on the date on which the Secretary causes to be published in the Federal Register a statement of findings that the actions set forth in section IV.L of the Agreement

(A) have been completed, including issuance of a judgment and decree by the SRBA court from which no further appeal may be taken; and

(B) have been determined by the United States on behalf of the Tribe and the allottees, the Tribe, and the State of Idaho to be consistent in all material aspects with the Agreement.

(b) WAIVER AND RELEASE OF CLAIMS AGAINST THE UNITED STATES.—

(1) IN GENERAL.—In consideration of performance by the United States of all actions required by the Agreement and this Act, including the appropriation of all funds authorized under sections 8(h) and 9(d)(1), the Tribe shall execute a waiver and release of the United States from—

(A) all claims for water rights within the Snake River Basin, injuries to such water rights, or breach of trust claims for failure to protect, acquire, or develop such water rights that accrued at any time up to and including the effective date determined under paragraph (2);

(B) all claims for injuries to the Tribe's treaty fishing rights, to the extent that such injuries result or resulted from reductions in the quantity of water available in the Snake River Basin;

(C) all claims of breach of trust for failure to protect Nez Perce springs or fountains treaty rights reserved in article VIII of the Treaty of June 9, 1863 (14 Stat. 651); and

(D) all claims of breach of trust arising out of the negotiation of or resulting from the adoption of the Agreement.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The waiver and release contained in this subsection shall take effect on the date on which the amounts authorized under sections 8(h) and 9(d)(1) are appropriated.

(B) PERIODS OF LIMITATION; EQUITABLE CLAIMS.—

(i) IN GENERAL.—All periods of limitation and time-based equitable defenses applicable to the claims set forth in paragraph (1) are tolled for the period between the date of enactment of this Act until the earlier of—

(I) the date on which the amounts authorized under sections 8(h) and 9(d)(1) are appropriated; or

(II) October 1, 2017.

(ii) EFFECT OF SUBPARAGRAPH.—This subparagraph neither revives any claim nor tolls any period of limitation or time-based equitable defense that may have expired before the date of enactment of this Act.

(3) DEFENSE.—The making of the amounts of appropriations authorized under sections 8(h) and 9(d)(1) shall constitute a complete defense to any claim pending in any court of the United States on the date on which the appropriations are made.

(c) RETENTION OF RIGHTS.—

(1) IN GENERAL.—The Tribe shall retain all rights not specifically waived or released in the Agreement or this Act.

(2) DWORSHAK PROJECT.—Nothing in the Agreement or this Act constitutes a waiver by the Tribe of any claim against the United States resulting from the construction and operation of the Dworshak Project (Project PWI 05090), other than those specified in subparagraphs (A) and (B) of subsection (b)(1).

(3) FUTURE ACQUISITION OF WATER RIGHTS.—Nothing in the Agreement or this Act precludes the Tribe or allottees, or the United States as trustee for the Tribe or allottees, from purchasing or otherwise acquiring water rights in the future to the same extent as any other entity in the State.

SEC. 11. MISCELLANEOUS.

(a) GENERAL DISCLAIMER.—The parties expressly reserve all rights not specifically granted, recognized, or relinquished by the settlement described in the Agreement or this Act.

(b) DISCLAIMER REGARDING OTHER AGREEMENTS AND PRECEDENT.—

(1) IN GENERAL.—Subject to section 9(b)(3), nothing in this Act amends, supersedes, or preempts any State law, Federal law, Tribal law, or interstate compact that pertains to the Snake River Basin.

(2) NO ESTABLISHMENT OF STANDARD.—Nothing in this Act—

- (A) establishes any standard for the quantification of Federal reserved water rights or any other Indian water claims of any other Indian tribes in any other judicial or administrative proceeding; or
- (B) limits the rights of the parties to litigate any issue not resolved by the Agreement or this Act.
- (3) NO ADMISSION AGAINST INTEREST.—Nothing in this Act constitutes an admission against interest against any party in any legal proceeding.
- (c) TREATY RIGHTS.—Nothing in the Agreement or this Act impairs the treaty fishing, hunting, pasturing, or gathering rights of the Tribe except to the extent expressly provided in the Agreement or this Act.
- (d) OTHER CLAIMS.—Nothing in the Agreement or this Act quantifies or otherwise affects the water rights, claims, or entitlements to water, or any other treaty right, of any Indian tribe, band, or community other than the Tribe.
- (e) RECREATION ON DWORSHAK RESERVOIR.—
 - (1) IN GENERAL.—In implementing the provisions of the Agreement and this Act relating to the use of water stored in Dworshak Reservoir for flow augmentation purposes, the heads of the Federal agencies involved in the operational Memorandum of Agreement referred to in the Agreement shall implement a flow augmentation plan beneficial to fish and consistent with the Agreement.

(2) CONTENTS OF PLAN.—The flow augmentation plan may include provisions beneficial to recreational uses of the reservoir through maintenance of the full level of the reservoir for prolonged periods during the summer months.

(f) JURISDICTION.—

(1) NO EFFECT ON SUBJECT MATTER JURISDICTION.—Nothing in the Agreement or this Act restricts, enlarges, or otherwise determines the subject matter jurisdiction of any Federal, State, or Tribal court.

(2) CONSENT TO JURISDICTION.—The United States consents to jurisdiction in a proper forum for purposes of enforcing the provisions of the Agreement.

(3) EFFECT OF SUBSECTION.—Nothing in this subsection confers jurisdiction on any State court to—

- (A) enforce Federal environmental laws regarding the duties of the United States; or
- (B) conduct judicial review of Federal agency action.

DIVISION K—SMALL BUSINESS

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

<< 15 USCA § 631 NOTE >>

(a) SHORT TITLE.—This division may be cited as the “Small Business Reauthorization and Manufacturing Assistance Act of 2004”.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

TITLE I—SMALL BUSINESS REAUTHORIZATION AND MANUFACTURING

Sec. 1. Short title; table of contents.

Subtitle A—Small manufacturers assistance

Sec. 101. Express loans.

Sec. 102. Loan guarantee fees.

Sec. 103. Increase in guarantee amount and institution of associated fee.

Sec. 104. Debenture size.

Sec. 105. Job requirements.

Sec. 106. Report regarding national database of small manufacturers.

Sec. 107. International trade.

Subtitle B—Authorizations

, 2005, through June 30, 2006, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 23, 2005.

CHAPTER 148
(H.B. No. 152)

AN ACT

RELATING TO THE SNAKE RIVER WATER RIGHTS AGREEMENT OF 2004; TO DEFINE TERMS; TO PROVIDE FOR THE APPROVAL, RATIFICATION AND CONFIRMATION OF THE SNAKE RIVER WATER RIGHTS AGREEMENT OF 2004; TO AUTHORIZE IMPLEMENTATION OF THE SNAKE RIVER WATER RIGHTS AGREEMENT OF 2004; DECLARING AN EMERGENCY AND PROVIDING A CONTINGENCY ON EFFECTIVENESS.

Enacted by the Legislature of the State of Idaho:

SECTION 1. DEFINITIONS. For purposes of this act:

(1) "The Snake River Water Rights Agreement of 2004" means the document titled "Mediator's Term Sheet" dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document.

(2) "SRBA" means the Snake River Basin Adjudication litigation before the SRBA Court styled as In re Snake River Basin Adjudication, Case No. 39576.

(3) "SRBA Court" means the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls in re Snake River Basin Adjudication.

SECTION 2. RATIFICATION OF THE SNAKE RIVER WATER RIGHTS AGREEMENT OF 2004. The Snake River Water Rights Agreement of 2004 as approved, ratified and confirmed by the 108th Congress of the United States in the "Snake River Water Rights Act of 2004," Pub. L. No. 108-447 (H.R. 4818), 118 Stat. 3431 to 3441 (December 8, 2004), is hereby approved, ratified and confirmed.

SECTION 3. AUTHORIZATION FOR IMPLEMENTATION OF THE SNAKE RIVER WATER RIGHTS AGREEMENT OF 2004. The Governor and the executive branch agencies with obligations under the agreement shall execute and perform all actions consistent with this act that are necessary to implement The Snake River Water Rights Agreement of 2004.

SECTION 4. DECLARING AN EMERGENCY -- CONTINGENCY ON EFFECTIVENESS. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect at such time that the Governor issues a proclamation certifying that all conditions for the effectiveness of The Snake River Water Rights Agreement of 2004 have been satisfied.

Approved March 24, 2005.

CHAPTER 149
(H.B. No. 153)

AN ACT

RELATING TO WATER; AMENDING SECTION 42-1763B, IDAHO CODE, TO PROVIDE INTERIM AUTHORITY FOR RENTAL OF WATER TO AUGMENT FLOWS FOR LISTED ANADROMOUS FISH, TO PROVIDE LEGISLATIVE FINDINGS AND INTENT, TO AUTHORIZE THE U.S. BUREAU OF RECLAMATION TO LEASE STORAGE AND NATURAL FLOW WATER RIGHTS THROUGH THE STATE WATER SUPPLY BANK AND LOCAL RENTAL POOLS UNDER SPECIFIED CONDITIONS, TO PROVIDE THAT CERTAIN RENTAL OF WATER FOR FLOW AUGMENTATION IS SUBJECT TO SPECIFIED LIMITATIONS AND CONDITIONS, TO PROVIDE CRITERIA RELATING TO STORAGE WATER RELEASED AND ANY NATURAL FLOW WATER RIGHTS LEASED OR ACQUIRED BY THE U.S. BUREAU OF RECLAMATION, TO SPECIFY CONDITIONS ON WATER RENTALS AND USE, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE THAT THE STATE SHALL PURSUE A SHAPING AGREEMENT FOR CERTAIN WATER RELEASED FROM LAKE CASCADE, TO PROVIDE THAT THE RENTAL OR USE OF CERTAIN WATER SHALL BE IN COMPLIANCE WITH SPECIFIED REQUIREMENTS, TO PROVIDE THAT THE STATE OF IDAHO SHALL NOT TAKE SPECIFIED ACTIONS TO REMEDY OR ADDRESS CERTAIN VIOLATIONS, TO REQUIRE THE U.S. BUREAU OF RECLAMATION TO SUBMIT DESIGNATED REPORTS TO THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES, TO PROVIDE REQUIREMENTS RELATING TO WATER RENTED OR USED FROM ABOVE HELLS CANYON DAM, TO PROVIDE THAT WATER RENTED OR USED SHALL BE SUBJECT TO SPECIFIED TERMS AND CONDITIONS, TO SPECIFY LIMITATIONS RELATING TO FLOW AUGMENTATION, TO CLARIFY LIMITATIONS RELATING TO SPECIFIED PROVISIONS, TO PROVIDE CONDITIONS ON EFFECTIVENESS, TO PROVIDE A CONDITIONAL SUNSET AND TO PROVIDE LEGISLATIVE INTENT RELATING TO CONSIDERATION OF REPEAL UNDER CERTAIN CONDITIONS; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-1763B, Idaho Code, be, and the same is hereby amended to read as follows:

42-1763B. INTERIM AUTHORITY FOR RENTAL OF STORAGE WATER TO AUGMENT FLOWS ~~DURING--THE-MIGRATION-OF-SNAKE-RIVER-SALMON~~ FOR LISTED ANADROMOUS FISH. (1) Legislative findings and intent regarding rental of storage water from by the U.S. bureau of reclamation projects in the Snake River basin within Idaho to augment lower Snake River flows ~~during-the-migration-of-Snake-River-salmon~~ for anadromous fish listed under the endangered species act.

(a) The legislature finds that the U.S. bureau of reclamation ~~desires~~ proposes to release up to four hundred twenty-seven thousand (427,000) acre feet of ~~leased or uncontracted water to--augment salmon--flows diverted from the Snake River basin to reservoir storage above Lewiston, and to lease or acquire up to sixty thousand (60,000) acre feet of consumptive natural flow water rights diverted and consumed below Milner dam and above Swan Falls dam from the mainstem of the Snake River to augment flows downstream of Hells Canyon dam during 2002,--2003--and 2004 and through December 31, 2034.~~ The state of Idaho is experiencing serious drought conditions

and it is therefore uncertain whether ~~four-hundred-twenty-seven thousand-(427,000)-acre-feet-of~~ this water will be available for rental for flow augmentation purposes in all years. Nonetheless, ~~t~~The legislature further finds that authorization of this legislation ~~will--facilitate-ongoing-negotiations-in-the-Snake-River-basin~~ adjudication is necessary for approval and implementation of the Snake River Water Rights Agreement of 2004 (Mediator's Term Sheet dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document), as approved, ratified, and confirmed by the 108th Congress of the United States in the "Snake River Water Rights Act of 2004," Pub. L. No. 108-447 (H.R. 4818), 118 Stat. 3431 to 3441 (December 8, 2004). Therefore, the legislature authorizes the U.S. bureau of reclamation to ~~release lease storage and natural flow water from--its--projects rights through the state water supply bank and local rental pools under the limited conditions of this section. in-2002,-2003-and-2004.~~ Any rentals of water for flow augmentation under any other provision of law, including section 42-108A, Idaho Code, shall be subject to the limitations and conditions of this section and the Snake River Water Rights Agreement of 2004.

~~(b)--it-is-the-intent-of-the-legislature-to--promptly--consider--the repeal--of--this--section--in--the--event--that--the--provisions--of--the--supplemental-biological-opinion-issued-by-the-national-marine-fisheries service-on-January-24,-2002,-related-to-the-provision-of--flows--for salmon-from-the-Snake-River-basin-above-Brownlee-Reservoir-are-modified--or--declared--arbitrary,-capricious-or-otherwise-untawful-or-set aside-by-any-federal-court.~~

(2) Rental of storage water from by the U.S. bureau of reclamation.

storage

(a) Notwithstanding the legislative approval required in section 42-108, Idaho Code, any storage water released from ~~U.S.-bureau-of reclamation-reservoirs and any natural flow water rights leased or acquired by the bureau within the state of Idaho for use-to-augment river-flows-during-the-migration-of-Snake-River-salmon listed anadromous fish~~ pursuant to this section must be rented through the water bank operated by the Idaho water resource board pursuant to sections 42-1761 through 42-1764, Idaho Code, or, in the case of storage water releases, through local water rental committees, created pursuant to section 42-1765, Idaho Code, under their respective water bank rules.

(b) For any rental of water pursuant to this section, the director shall not be required to determine under section 42-1763, Idaho Code, whether the water supply is sufficient for the purpose for which it is sought, whether the rental would cause the use of water to be enlarged beyond that authorized under the water right to be rented, whether such use is in the public interest, or whether such use is consistent with the factors enumerated under subsection (3) of section 42-401, Idaho Code.

(3) Conditions on storage water rentals.

(a) Any storage water made available under this section shall be obtained only from willing lessors. Any water rented under this section from reservoirs sources located within a basin having a local rental pool committee established pursuant to section 42-1765, Idaho

Code, or section 42-1765A, Idaho Code, shall be rented pursuant to this section only through the local rental pool committee.

(b) Storage water made available under this section shall be limited to four hundred twenty-seven thousand (427,000) acre feet annually, and natural consumptive flow water shall be limited to not more than the sixty thousand (60,000) acre feet annually that accrue to natural flow water rights acquired by the U.S. bureau of reclamation pursuant to the terms of the Snake River Water Rights Agreement of 2004. These releases--from-storage amounts shall be reduced by other water the U.S. bureau of reclamation provides for flow augmentation of-salmon-flows for listed anadromous fish from the Snake River and-its-tributaries basin above Lewiston.

(c) In no event shall the release of water under this section cause the water surface of Lake Cascade Reservoir to be below the elevation required to maintain a storage volume of three hundred thousand (300,000) acre feet, fifty thousand (50,000) acre feet of which is dead space, which is currently estimated to be at an elevation of four thousand eight hundred nine and two-tenths (4,809.2) feet. In addition, the state of Idaho shall pursue a shaping agreement for any uncontracted water released from Lake Cascade under this section.

(d) The rental or use of water under this section shall be in compliance with any permit, applicable water quality rule and regulation or other requirements of the clean water act, shall not cause jeopardy to other species in the state of Idaho, and shall not result in significant adverse impacts to recreational uses of the waters of the Snake River basin in Idaho. The state of Idaho shall not require any restriction, modification, or condition on the diversion, storage, use, discharge of water, or land use to remedy or address violations of water quality standards or other clean water act requirements to the extent the rental or use of water by the U.S. bureau of reclamation under this section causes the violations.

(e) The U.S. bureau of reclamation shall submit a report to the director by January 15 of each year describing the time, volume and purpose of storage water released provided for salmon--purposes listed anadromous fish from the Snake River basin above Lewiston during the past year and shall report on the plan for releases--for the spring and summer chinook by April 1 and on the plan for releases-for the fall chinook by July 15 of each year.

(ef) All storage water rented from or used by the U.S. bureau of reclamation reservoirs under this section from above Hells Canyon dam must be used for power production purposes within the state of Idaho.

(g) All water rented or used by the U.S. bureau of reclamation under this section shall be subject to the terms and conditions contained in the Snake River Flow Component of the Snake River Water Rights Agreement of 2004.

(fh) Nothing herein shall entitle the U.S. bureau of reclamation to rent storage or use water for flow augmentation upon termination or expiration of the permission given in this section.

(4) Nothing in this section shall be construed to alter, or authorize the U.S. bureau of reclamation to modify in any way the its existing contractual obligations, of-the-U.S.-bureau-of-reclamation or to constitute a finding by the legislature that the rental or use of storage

water or natural flow water rights for flow augmentation of-flows for salmon-migration listed anadromous fish or any other species is a beneficial use of water, that it is in the public interest, or whether such use injures existing water rights.

(5) This section shall not become effective until the director certifies to the governor that the U.S. bureau of reclamation's applications to transfer water right numbers 4616, 4617, 4618, 4623, 4625, 4626, 4627, 4628, 4629, 4630, 4631, 4632, 4633 and 4636, and to amend water right permit numbers 25-07004 and 63-3618 will be withdrawn, or held in abeyance until July 1, 2005 while this section is in effect, and the governor further issues a proclamation certifying that all conditions for the effectiveness of the Snake River Water Rights Agreement of 2004 have been satisfied.

~~(6) On and after January 1, 2005, this act shall be null, void and of no force and effect.~~ This act shall be null, void and of no force and effect upon the expiration or termination of the Snake River Flow Component of the Snake River Water Rights Agreement of 2004. In addition, it is the intent of the legislature to consider the repeal of this section in the event that any of the provisions of the Snake River Flow Component of the Snake River Water Rights Agreement of 2004 are modified or declared arbitrary, capricious or otherwise unlawful or set aside by any federal court or there is a finding of jeopardy by any federal court in regard to any biological opinions for projects operated by the U.S. bureau of reclamation in the Snake River basin in Idaho.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2005.

Approved March 24, 2005.

CHAPTER 150
(H.B. No. 154)

AN ACT

RELATING TO MINIMUM STREAM FLOW WATER RIGHTS; AMENDING CHAPTER 15, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1507, IDAHO CODE, TO PROVIDE FOR THE ESTABLISHMENT OF CERTAIN MINIMUM STREAM FLOW WATER RIGHTS, TO AUTHORIZE THE WATER RESOURCE BOARD TO HOLD THE MINIMUM STREAM FLOW WATER RIGHTS IN TRUST AND TO FILE CLAIMS FOR THE RIGHTS IN THE SNAKE RIVER BASIN ADJUDICATION, TO PROVIDE A PRIORITY DATE, TO PROVIDE FOR SUBORDINATION TO SPECIFIED USES, TO WAIVE CERTAIN FILING FEES, TO PROVIDE THAT CERTAIN MINIMUM STREAM FLOW WATER RIGHTS MAY BE SATISFIED AND MAINTAINED THROUGH DESIGNATED METHODS, TO PROVIDE FOR CERTAIN NOTICE AND CONSULTATION IN THE EVENT THE STATE DECIDES TO CHANGE ANY MINIMUM STREAM FLOW WATER RIGHT, TO CLARIFY THE AUTHORITY OF THE STATE IN RELATION TO THE MINIMUM STREAM FLOW WATER RIGHTS AND TO PROVIDE A CONTINGENCY ON EFFECTIVENESS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

water or natural flow water rights for flow augmentation of flows for salmon migration listed anadromous fish or any other species is a beneficial use of water, that it is in the public interest, or whether such use injures existing water rights.

(5) This section shall not become effective until the director certifies to the governor that the U.S. bureau of reclamation's applications to transfer water right numbers 4616, 4617, 4618, 4623, 4625, 4626, 4627, 4628, 4629, 4630, 4631, 4632, 4633 and 4636, and to amend water right permit numbers 25-07004 and 63-3618 will be withdrawn, or held in abeyance until July 1, 2005 while this section is in effect, and the governor further issues a proclamation certifying that all conditions for the effectiveness of the Snake River Water Rights Agreement of 2004 have been satisfied.

(6) ~~On and after January 1, 2005, this act shall be null, void and of no force and effect.~~ This act shall be null, void and of no force and effect upon the expiration or termination of the Snake River Flow Component of the Snake River Water Rights Agreement of 2004. In addition, it is the intent of the legislature to consider the repeal of this section the event that any of the provisions of the Snake River Flow Component of the Snake River Water Rights Agreement of 2004 are modified or declared arbitrary, capricious or otherwise unlawful or set aside by any federal court or there is a finding of jeopardy by any federal court in regard to any biological opinions for projects operated by the U.S. bureau of reclamation in the Snake River basin in Idaho.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2005.

Approved March 24, 2005.

CHAPTER 150
(H.B. No. 154)

AN ACT

RELATING TO MINIMUM STREAM FLOW WATER RIGHTS; AMENDING CHAPTER 15, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1507, IDAHO CODE, TO PROVIDE FOR THE ESTABLISHMENT OF CERTAIN MINIMUM STREAM FLOW WATER RIGHTS, TO AUTHORIZE THE WATER RESOURCE BOARD TO HOLD THE MINIMUM STREAM FLOW WATER RIGHTS IN TRUST AND TO FILE CLAIMS FOR THE RIGHTS IN THE SNAKE RIVER BASIN ADJUDICATION, TO PROVIDE A PRIORITY DATE, TO PROVIDE FOR SUBORDINATION TO SPECIFIED USES, TO WAIVE CERTAIN FILING FEES, TO PROVIDE THAT CERTAIN MINIMUM STREAM FLOW WATER RIGHTS MAY BE SATISFIED AND MAINTAINED THROUGH DESIGNATED METHODS, TO PROVIDE FOR CERTAIN NOTICE AND CONSULTATION IN THE EVENT THE STATE DECIDES TO CHANGE ANY MINIMUM STREAM FLOW WATER RIGHT, TO CLARIFY THE AUTHORITY OF THE STATE IN RELATION TO THE MINIMUM STREAM FLOW WATER RIGHTS AND TO PROVIDE A CONTINGENCY ON EFFECTIVENESS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 15, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-1507, Idaho Code, and to read as follows:

42-1507. SNAKE RIVER WATER RIGHTS AGREEMENT MINIMUM STREAM FLOW WATER RIGHTS ESTABLISHED. (1) The legislature hereby establishes minimum stream flow water rights for the stream reaches identified by resolution of the Idaho water resource board, adopted February 8, 2005. The elements of the minimum stream flow water rights established by this section are as defined by the board's resolution and the attachments thereto. The board shall hold the minimum stream flow water rights in trust for the people of the state of Idaho, and the board shall file claims for the rights in the Snake river basin adjudication. These minimum stream flow water rights shall have a priority date as of April 1, 2005, and shall be subordinated to future domestic, commercial, municipal, and industrial water uses and such other future uses as described in the December 17, 2004, resolution of the Idaho water resource board providing approval of the Snake River Water Rights Agreement of 2004 ("Mediator's Term Sheet" dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document), as approved, ratified, and confirmed by the 108th Congress of the United States in the "Snake River Water Rights Act of 2004," Pub. L. No. 108-447 (H.R. 4818), 118 Stat. 3431 to 3441 (December 8, 2004).

(2) No fee shall be required in connection with the filing of claims in the Snake river basin adjudication for the minimum stream flow water rights established by this section.

(3) Any minimum stream flow water rights established by this section that are not capable of being maintained may be satisfied and maintained through operation of the water supply bank authorized by sections 42-1761 through 42-1765, Idaho Code, inclusive, and other available means consistent with Idaho law.

(4) In the event the state decides to change any minimum stream flow water rights created by this section, it will provide notice of such change and consult with the Nez Perce tribe on a government-to-government basis as provided in the Snake River Water Rights Agreement of 2004. Provided however, nothing herein or in the Snake River Water Rights Agreement of 2004 shall be construed or interpreted to abridge, impair or limit the authority of the state of Idaho to create, modify or terminate any minimum stream flow water right established by this section.

(5) This section shall not become effective until the governor issues a proclamation certifying that all conditions for the effectiveness of the Snake River Water Rights Agreement of 2004 have been satisfied.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 24, 2005.

RESOLUTION

WHEREAS, the Nez Perce Tribal Executive Committee has been empowered to act for and in behalf of the Nez Perce Tribe, pursuant to the Revised Constitution and By-Laws, adopted by the General Council of the Nez Perce Tribe, on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961; and

WHEREAS, the Nez Perce Tribe entered into an 1855 Treaty with the United States in which the Tribe, among other things, reserved to itself the exclusive use and benefit of the area located within the boundaries of the 1855 Nez Perce Reservation; and

WHEREAS, the Nez Perce Tribe further reserved in the 1855 Treaty the exclusive right of taking fish in all the streams running through or bordering the 1855 Nez Perce Reservation, the right of taking fish at all its usual and accustomed places throughout its aboriginal area in common with the citizens of the Territory, the right to erect temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing horses and cattle upon open and unclaimed land outside the 1855 Nez Perce Reservation; and

WHEREAS, each of the subsequent treaties and agreements between the Tribe and the United States reaffirmed the Tribe's fishing, hunting, gathering, and pasturing rights as set forth in the 1855 Treaty; and

WHEREAS, Article VI, Section 1, of the Revised Constitution and Bylaws of the Nez Perce Tribe provides that the affairs of the Nez Perce Tribe shall be administered by the Nez Perce Tribal Executive Committee (NPTEC); and

WHEREAS, Article VIII, Section 1(A), of the Revised Constitution and Bylaws of the Nez Perce Tribe provides that the NPTEC has the power to represent the Tribe in negotiations with federal, state and local governments and with private corporations, associations, and individuals; and

WHEREAS, Article VIII, Section 2(A), of the Revised Constitution and Bylaws of the Nez Perce Tribe provides that the NPTEC has the power to manage the property of the Nez Perce Tribe, including tribal lands, restricted funds, timber and other resources, and to purchase or otherwise acquire lands or interest in lands within or without the reservation; and

WHEREAS, Article VIII, Section 2(B), of the Revised Constitution and Bylaws of the Nez Perce Tribe provides that the NPTEC has the power to engage in any business or other economic transaction that will further the economic development of the Tribe and its members; and

WHEREAS, in 1987, the State of Idaho initiated the Snake River Basin Adjudication in the Fifth Judicial District Court for the State of Idaho in Twin Falls, Idaho; and

WHEREAS, the Snake River Basin Adjudication is a general stream adjudication of all rights to water in that portion of the Snake River Basin located within the State of Idaho; and

WHEREAS, the Nez Perce Tribe, and the United States on behalf of the Nez Perce Tribe, were legally required to file claims in the Snake River Basin Adjudication to protect the Tribe's treaty-reserved water rights; and

WHEREAS, in 1993, the Nez Perce Tribe, and the United States on behalf of the Nez Perce Tribe, timely filed water right claims in the Snake River Basin Adjudication for instream flows, springs located in the 1863 ceded area, and on-reservation consumptive uses, and the litigation of those claims began; and

WHEREAS, a Federal Negotiating Team was appointed at the request of the NPTEC in 1993, so that the Tribe and the United States could engage in voluntary settlement negotiations with objectors to the Tribe's water right claims; and

WHEREAS, the Snake River Basin Adjudication Court ordered all the parties to the Nez Perce Tribe's water right claims into mediation in 1998 while the litigation of those claims continued; and

WHEREAS, the NPTEC and other parties to the mediation of the Tribe's water right claims in the Snake River Basin Adjudication have agreed in principle to proposed settlement terms which are contained in the Mediator's Term Sheet dated April 20, 2004, and submitted on that date to the Snake River Basin Adjudication Court (the "SRBA Agreement"); and

WHEREAS, the United States Congress has passed, and the President of the United States has signed, the Snake River Water Rights Act of 2004 (Public Law 108-447), approving and ratifying the SRBA Agreement; and

WHEREAS, the Idaho Legislature has passed, and the Governor of the State of Idaho has signed, three bills approving and ratifying the SRBA Agreement and implementing the provisions thereof; and

WHEREAS, nothing contained in the SRBA Agreement, the Snake River Water Rights Act, or the State implementing legislation affects the rights expressly reserved by the Nez Perce Tribe or guaranteed to the Nez Perce Tribe by the United States in the 1855 Treaty and preserved in the subsequent treaties and agreements between the Nez Perce Tribe and the United States; and

WHEREAS, the NPTEC has determined that the proposed settlement terms contained in the SRBA Agreement are a reasonable alternative to additional state court litigation and are in the best interests of the Nez Perce Tribe.

NOW, THEREFORE, BE IT RESOLVED, that the NPTEC, pursuant to the authority provided by the Revised Constitution and Bylaws of the Nez Perce Tribe, hereby approves and ratifies the SRBA Agreement as approved and ratified by the Snake River Water Rights Act of 2004; and

BE IT FURTHER RESOLVED, that approval and ratification of the SRBA Agreement are contingent upon satisfactory completion of all other conditions contained in the SRBA Agreement and the Snake River Water Rights Act of 2004; and

BE IT FURTHER RESOLVED, that all Bureau of Land Management (BLM) lands referenced in Section 6(a)(2) of the Snake River Water Rights Act as available for transfer to the Bureau of Indian Affairs (BIA) in trust for the Tribe, and since made available through the appraisal process of Section 6(a)(3) of the Snake River Water Rights Act of 2004 as a result of the referenced appraisal resulting in a value under \$7 million, are hereby selected for transfer to the BIA in trust for the Tribe; and

BE IT FURTHER RESOLVED, that the NPTEC Chairman and Secretary, or their designees within the tribal departments with responsibilities under the SRBA Agreement, are hereby authorized and directed to execute all documents and perform all actions necessary to implement the SRBA Agreement; and

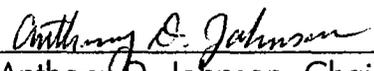
BE IT FINALLY RESOLVED, that this Resolution shall only become effective at such time as the NPTEC Chairman and Secretary provide written certification to the Nez Perce Tribal Executive Committee that all conditions for effectiveness of the SRBA Agreement and the Snake River Water Rights Act of 2004 have been satisfied.

CERTIFICATION

The foregoing resolution was duly adopted by the Nez Perce Tribal Executive Committee meeting in Special Session, March 29, 2005, in the Richard A. Halfmoon Council Chambers, Lapwai, Idaho, a quorum of its members being present and voting.

BY: 
Rebecca A. Miles, Secretary

ATTEST:


Anthony D. Johnson, Chairman

**CRATERS OF THE
MOON
AGREEMENT**

WATER RIGHTS AGREEMENT BETWEEN THE STATE OF IDAHO
AND THE UNITED STATES FOR THE
CRATERS OF THE MOON NATIONAL MONUMENT

The State of Idaho and the United States agree as follows:

1. Preamble

- 1.1 The State of Idaho, pursuant to Idaho Code § 42-1406A (1990), has commenced in the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls a general adjudication of the rights to the use of the water from that portion of the Snake River Basin located within the State of Idaho.
- 1.2 Idaho Code § 42-1409(3) (1990) provides that a claimant of a water right reserved under federal law may submit a negotiated agreement between the State of Idaho and the claimant in lieu of a notice of claim.
- 1.3 Executive Order Nos. 85-9, 87-9, and 91-8 provide that it is in the interest of the State of Idaho to quantify federal reserved water rights through negotiations.
- 1.4 The State of Idaho and the United States desire to exercise the right to submit a negotiated agreement quantifying the rights of the United States to the use of water, pursuant to both federal and Idaho law, for the Craters of the Moon National Monument.

2. Definitions

2.1 The following definitions apply for the purpose of this Agreement:

- .1 "Acre foot" or "AF" means the amount of water necessary to cover one acre of land to a depth of one foot and is equivalent to 43,560 cubic feet or 325,851 gallons.
- .2 "Acre feet per year" or "AFY" means the number of acre feet of water used in a calendar year commencing January 1 and ending December 31.
- .3 "Annual diversion volume" means the maximum volume of water in AFY that can be diverted or stored by the holder of a water right.
- .4 "Annual volume of consumptive use" means the maximum volume of water in AFY that can be consumptively used by the holder of a water right.
- .5 "Aquifer" means a geologic formation, group of formations, or part of a formation or other body of earth material capable of transmitting water at a rate sufficient for water supply purposes.
- .6 "Basis of right" refers to the legal authority pursuant to which the water right is established or the document by which the right is evidenced.
- .7 "Consumptive use" means the amount of water that is used by any action or process and is not returned to the water system. For an instream flow right, the

term "natural consumption" shall mean consumption of water by natural processes.

.8 "Craters of the Moon National Monument" or "Monument" means all lands within the exterior boundaries of the area described on the boundary map which is attached hereto as Attachment I and incorporated herein by reference. The following proclamations, which are attached hereto as Attachment II and incorporated herein by reference, describe lands that are included or excluded from the Monument:

- .i Proclamation No. 1694, 43 Stat. 1947 (May 2, 1924), designated as Area A on Attachment I.
- .ii Proclamation No. 1843, 45 Stat. 2959 (July 23, 1928), designated as Area B on Attachment I.
- .iii Proclamation No. 1916, 46 Stat. 3029 (July 9, 1930), designated as Area C on Attachment I.
- .iv Proclamation No. 3506, 77 Stat. 960 (November 19, 1962), designated as Area D on Attachment I.
- .v Proclamation No. 2499, 55 Stat. 1660 (July 18, 1941), which excludes certain lands from this federal reservation.

.9 "Date of Priority" means the priority date assigned to the water right.

.10 "Director" means the Director of the Idaho Department of Water Resources or any successor.

- .11 "Diversion" means the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other act of man, or the impoundment of water in a reservoir.
- .12 "Ground water" means any water contained in an aquifer.
- .13 "Idaho Department of Water Resources" or "IDWR" means, the executive agency of the State of Idaho created by Idaho Code § 42-1701 (1990), or any successor agency.
- .14 "Idaho Water Resource Board" means the Idaho State Water Resource Agency constituted in accordance with Idaho Const. art. XV, § 7, or any successor agency.
- .15 "Instream flow use" means the use of water for the maintenance of natural stream conditions.
- .16 "Monument commercial use" means the use of water for the maintenance and administration of the Monument, including visitor centers and other related facilities.
- .17 "Monument domestic use" means the use of water for homes, organization camps, and public campgrounds within the Monument for visitors and Monument personnel use.
- .18 "Monument irrigation use" means the application of water to the land surface or root zone of the soil for the purpose of producing a garden, lawn, or landscaping on Monument lands.

- .19 "Parties" means the United States and the State of Idaho.
- .20 "Perched ground water" means unconfined subsurface water separated from an underlying body of ground water by unsaturated material.
- .21 "Period of use" means the time of the year when water may be used for a particular purpose.
- .22 "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the State of Idaho or any political subdivision, the United States, an Indian tribe, or any other public or private entity. Idaho Code § 42-1401A(8) (1990).
- .23 "Place of use" means the location where water is used.
- .24 "Point of diversion" means any location at which water is diverted from the water system.
- .25 "Purpose of use" means the nature of use of the water right.
- .26 "Right number" means the number assigned to each decreed water right for purposes of identification. The first two numerals of the right number indicate the IDWR's hydrologic basin number.
- .27 "Snake River Basin Adjudication" or "SRBA" means Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987 entitled "In Re the General Adjudication of Rights to the Use of Water from the

Snake River Basin Water System," which was commenced pursuant to Idaho Code § 42-1406A (1990).

- .28 "Snake River Regional Aquifer," also known as the "Snake Plain Aquifer," refers to the aquifer underlying the Monument, which is composed of a heterogeneous body of permeable material which acts as a water-yielding hydrological unit of regional extent.
- .29 "Source" means the named or described source of water within the water system.
- .30 "Spring" means a concentrated discharge of subsurface water to the ground surface.
- .31 "Surface water" means any lake, spring, creek, stream, river, or other natural body of standing or moving water on the surface of the earth.
- .32 "United States" means the United States of America.
- .33 "Water Table" means the upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable formation. Where an overlying impermeable confining formation exists, the aquifer in question has no water table.

3. Scope of Agreement

- 3.1 The purpose of this Agreement is to quantify all existing rights of the United States under state and federal law for present and future use of water for the Monument.

3.2 This Agreement relates to all waters on, under, adjacent to, or otherwise appurtenant to the Monument in the State of Idaho.

4. Parties and Authority

4.1 The Governor has authority to execute this Agreement pursuant to Idaho Constitution art. IV, § 5, and Idaho Code § 67-802 (1990).

4.2 The Idaho Attorney General, or any duly designated official of the Office of the Idaho Attorney General, has authority to execute this Agreement pursuant to the authority to settle litigation as provided for in Idaho Constitution, art. IV, § 1, and Idaho Code § 67-1401 (1990).

4.3 The Idaho Water Resource Board has authority to execute this Agreement pursuant to Idaho Code § 42-1734(3) (1990) and Executive Order Nos. 85-9, 87-9, and 91-8.

4.4 The United States Attorney General, or any duly designated official of the United States Department of Justice, has authority to execute this Agreement on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. § 516-517 (1982).

4.5 The Secretary of the Interior, or any duly designated official of the United States Department of the Interior, has authority to execute this Agreement on behalf of the United States Department of Interior pursuant to 43 U.S. C. § 1457 (1982).

5. Water Rights of the United States for the Monument

5.1 The name and address of the claimant for all the water rights negotiated and settled by this Agreement is as follows:

United States of America
c/o National Park Service
Pacific Northwest Regional Office
83 South King Street, Suite 212
Seattle, WA 98121

5.2 Water Rights for Consumptive Use in Area A:

.1 Right No. 34-12383, also known as 36-15342.

.i Source: All surface water and ground water sources arising on, occurring on, or under, Area A as shown on Attachment I.

.ii Annual Diversion Volume: The maximum annual diversion volume for all consumptive use water rights set forth in this Agreement is 54.5 AFY, except as provided in Article 5.10 *infra*.

.iii Date of Priority: May 2, 1924.

.iv Points of Diversion: Any point within Area A as shown on Attachment I.

.v Purpose of Use: Monument commercial use, Monument domestic use, and Monument irrigation use.

.vi Period of Use: January 1 - December 31.

.vii Annual Volume of Consumptive Use: The maximum consumptive use for all consumptive use water rights set forth in this Agreement is 19.9 AFY.

The quantity consumed for fire suppression in accordance with Article 5.10, *infra*, is not limited by this Agreement.

- .viii Place of Use/Legal Description of Reservation:
Any place within the boundaries of the Monument.
- .ix Basis of Right: Reservation under Proclamation No. 1694.
- .x Comments: No diversions presently exist.

5.3 Water Rights for Non-consumptive Use in Area A:

- .1 Right No. 34-12384, also known as 36-15343.
 - .i Source: All surface water within Area A as shown on Attachment I.
 - .ii Amount of Water: Entire flow of each source in excess of amount diverted by Right No. 34-12383, also known as 36-15342 [Article 5.2.1].
 - .iii Date of Priority: May 2, 1924.
 - .iv Beginning and Ending Point of Instream Flow or Location of Each Source: Within Area A as shown on Attachment I.
 - .v Purpose of Use: Instream flow uses.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.

- .viii Place of Use/Legal Description of Reservation:
Within Area A as shown on Attachment I.
- .ix Basis of Right: Reservation under Proclamation
No. 1694.
- .x Comments: None.

5.4 Water Rights for Consumptive Use in Area B:

- .1 Right No. 34-12385, also known as 36-15344.
 - .i Source: All surface water and ground water
sources arising on, occurring on, or under Area
B as shown on Attachment I, including but not
limited to Little Cottonwood Creek and its
tributaries.
 - .ii Annual Diversion Volume: The maximum annual
diversion volume for all consumptive use water
rights set forth in this Agreement is 54.5 AFY,
except as provided in Article 5.10, *infra*.
 - .iii Date of Priority: July 23, 1928
 - .iv Points of Diversion: Any point within Area B
as shown on Attachment I.
 - .v Purpose of Use: Monument commercial use,
Monument domestic use, and Monument irrigation
use.
 - .vi Period of Use: January 1- December 31
 - .vii Annual Volume of Consumptive Use: Included in
Right No. 34-12383, also known as 36-15342
[Article 5.2.1]. The quantity consumed for

fire suppression in accordance with Article 5.10 *infra* is not limited by this Agreement.

- .viii Place of Use/Legal Description of Reservation:
Any place within the boundaries of the Monument.
- .ix Basis of Right: Reservation under Proclamation No. 1843.
- .x Comments: The present diversions are from surface water and from a perched ground water aquifer.

5.5 Water Rights for Non-consumptive Use in Area B:

- .1 Right No. 34-12386.
 - .i Source: Little Cottonwood Creek
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 34-12385, also known as 36-15344 [Article 5.4.1].
 - .iii Date of Priority: July 23, 1928.
 - .iv Beginning and Ending Point of Instream Flow: Beginning in the headwaters of Little Cottonwood Creek in Section 21, and in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 16, all in Township 2 North, Range 24 East, Boise Meridian, and wholly within the Monument's boundaries; and ending where the stream disappears, in the SW $\frac{1}{4}$

NE $\frac{1}{4}$ of unsurveyed Section 27, Township 2 North,
Range 24 East, Boise Meridian.

- .v Purpose of Use: Instream flow uses.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation.
Within Area B as shown on Attachment I.
 - .ix Basis of Right: Reservation under Proclamation No. 1843.
 - .x Comments: None.
- .2 Right No. 34-12387.
- .i Source: Unnamed stream which is a tributary of Little Cottonwood Creek.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 34-12385, also known as 36-15344 [Article 5.4.1].
 - .iii Date of Priority: July 23, 1928.
 - .iv Beginning and Ending Point of Instream Flow:
Beginning where the unnamed tributary crosses the exterior boundary of the Monument at approximately 1,300 feet west and 1,000 feet south of the Northeast Corner of Section 28 (SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$), Township 2 North, Range 24 East, Boise Meridian; and ending at the stream's confluence with Little Cottonwood Creek in the

SE $\frac{1}{4}$ NW $\frac{1}{4}$ of unsurveyed Section 27, Township 2 North, Range 24 East, Boise Meridian.

- .v Purpose of Use: Instream flow uses.
- .vi Period of Use: January 1 - December 31
- .vii Annual Volume of Consumptive Use: None other than natural consumption.
- .viii Place of Use/Legal Description of Reservation: Within Area B as shown on Attachment I.
- .ix Basis of Right: Reservation under Proclamation No. 1843.
- .x Comments: None.

5.6 Water Rights for Consumptive Use in Area C:

.1 Right No. 34-12388.

- .i Source: All surface water and ground water sources arising on, occurring on, or under Area C as shown on Attachment I.
- .ii Annual Diversion Volume: The maximum annual diversion volume for all consumptive use water rights set forth in this Agreement is 54.5 AFY, except as provided in Article 5.10, *infra*.
- .iii Date of Priority: July 9, 1930.
- .iv Points of Diversion: Any point within Area C as shown on Attachment I.
- .v Purpose of Use: Monument commercial use, Monument domestic use, and Monument irrigation use.

- .vi Period of Use: January 1- December 31
- .vii Annual Volume of Consumptive Use: Included in Right No. 34-12383, also known as 36-15342 [Article 5.2.1]. The quantity consumed for fire suppression in accordance with Article 5.10 *infra* is not limited by this Agreement.
- .viii Place of Use/Legal Description of Reservation: Any place within the boundaries of the Monument.
- .ix Basis of Right: Reservation under Proclamation No. 1916.
- .x Comments: No diversions presently exist.

5.7 Water Rights for Non-consumptive Use in Area C:

- .1 Right No. 34-12389.
 - .i Source: Surface water within Area C as shown on Attachment I.
 - .ii Amount of Water: Entire flow of surface water in excess of amount diverted by Right No. 34-12388 [Article 5.6.1].
 - .iii Date of Priority: July 9, 1930.
 - .iv Beginning and Ending Point of Instream Flow or Location of Each Source: Within Area C as shown on Attachment I.
 - .v Purpose of Use: Instream flow uses.
 - .vi Period of Use: January 1 - December 31.

- .vii Annual Volume of Consumptive Use: None other than natural consumption.
- .viii Place of Use/Legal Description of Reservation: Within Area C as shown on Attachment I.
- .ix Basis of Right: Reservation under Proclamation No. 1916.
- .x Comments: None.

5.8 Water Rights for Consumptive Use in Area D:

.1 Right No. 36-15345.

- .i Source: All surface water and ground water sources arising on, occurring on, or under Area D as shown on Attachment I.
- .ii Annual Diversion Volume: The maximum annual diversion volume for all consumptive use water rights set forth in this Agreement is 54.5 AFY, except as provided in Article 5.10, *infra*.
- .iii Date of Priority: November 19, 1962.
- .iv Points of Diversion: Any point within Area D as shown on Attachment I.
- .v Purpose of Use: Monument commercial use, Monument domestic use, and Monument irrigation use.
- .vi Period of Use: January 1 - December 31
- .vii Annual Volume of Consumptive Use: Included in Right No. 34-12383, also known as 36-15342 [Article 5.2.1]. The quantity consumed for

fire suppression in accordance with Article 5.10 *infra* is not limited by this Agreement.

- .viii Place of Use/Legal Description of Reservation:
Any place within the boundaries of the Monument.
- .ix Basis of Right: Reservation under Proclamation No. 3506.
- .x Comments: No diversions presently exist.

5.9 Water Rights for Non-consumptive Use in Area D:

- .1 Right No. 36-15346.
 - .i Source: All surface water within Area D as shown on Attachment I.
 - .ii Amount of Water: Entire flow of surface water in excess of amount diverted by Right No. 36-15345 [Article 5.8.1].
 - .iii Date of Priority: November 19, 1962.
 - .iv Beginning and Ending Point of Instream Flow: Within Area D as shown on Attachment I.
 - .v Purpose of Use: Instream flow uses.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within Area D as shown on Attachment I.

.ix Basis of Right: Reservation under Proclamation
No. 3506.

.x Comments: None.

5.10 The United States may also divert water for fire suppression in accordance with the following paragraph to be included in the final decree in this matter:

"The use of water for fire suppression benefits the public. Water diverted for fire suppression may be taken randomly, without a definition of the specific elements of a recordable water right, and if so diverted for fire suppression, existing water rights shall not be diminished."

5.11 The rights described in this Agreement are Federal Reserved Water Rights with all the characteristics appertaining thereto. Non-use of all or any part of the Federal Reserved Water Rights shall not constitute a relinquishment, forfeiture or abandonment of the rights.

5.12 The United States shall not change any element of any Federal Reserved Water Right described in Article 5.

5.13 For purposes of this Agreement only, the surface water within the Monument boundaries and perched ground water underlying the Monument shall be treated as a self-contained water system. If the United States believes, however, that proposed or existing water uses or diversions outside the boundaries of the Monument will adversely affect or are adversely affecting the Monument's water

rights from surface water or perched ground water as defined in this Agreement, the United States may seek relief against those uses or diversions outside the boundaries of the Monument, except as provided in paragraph 5.14.

- 5.14 For purposes of this Agreement only, the United States disclaims any right to seek on behalf of the Monument the maintenance of any specific water table elevation in the Snake River Regional Aquifer.

6. Finality of Settlement Agreement

- 6.1 The parties understand that this Agreement will be submitted to the Director in lieu of a notice of claim in the Snake River Adjudication, that the Director will submit this Agreement and an abstract of this Agreement to the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls as part of a Director's Report, and that state law allows other persons not a party to this Agreement to file objections to the approval of this Agreement by the District Court.
- 6.2 The United States agrees that License Nos. 34-2381 [old no. 28964] and 34-2254 [old no. 16711] will be superseded by the water rights identified herein, only upon completion of all judicial proceedings, including appeals if any, together with entry of a final decree containing the water rights set forth in this Agreement.

- 6.3 The parties agree to move the Court for adoption of a decree awarding the United States the water rights set forth in this Agreement, and to jointly support and defend this Agreement against any and all objections or other challenges that may arise in any phase of the SRBA, including any appeals, and in securing any necessary ratification of the Agreement. If the Court, after notice and hearing, fails to approve the terms of this Agreement, then this Agreement shall be null and void.
- 6.4 The United States' water rights for the Monument confirmed in Article 5 shall be final and conclusive as to all parties to the SRBA upon the completion of all judicial proceedings, including any appeals, relative to this Agreement.

7. Disclaimers and Reservation of Rights

- 7.1 Except for the United States' water rights recognized in Article 5, the United States hereby relinquishes forever any and all existing claims to water under federal and state law from any source for present and future use on the Monument.
- 7.2 This Agreement has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding.

7.3 Entry of judgment as set forth above has been consented to by the parties without trial or adjudication of fact or law herein and without the judgment constituting evidence or an admission by any party with respect to any issue, which is, will be, or could be litigated in any proceeding other than the SRBA. See McShan v. Omega Louis Brandt et Frere, S.A., 536 F.2d 516, 519 (2d Cir. 1976). Once this Agreement becomes effective as provided by Article 13.1, the water right described in Article 5 of this Agreement shall be binding upon all parties to the SRBA, whether signatory to the Agreement or not.

7.4 Nothing in this Agreement shall be so construed or interpreted:

- .1 To establish any standard to be used for the quantification of Federal Reserved Water Rights in any judicial or administrative proceeding;
- .2 To determine the relative rights inter sese of persons using water under the authority of state law or to authorize the taking of a water right which is vested under state or federal law;
- .3 To limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;
- .4 To restrict the acquisition or exercise of an appropriative right to the use of water under state law for the Monument, provided the water rights confirmed in the Agreement have been fully used at the

time the application is made, or are not physically available for use through reasonable diversion facilities.

.5 To restrict the power of the United States to reserve water in the future, in accordance with applicable law.

7.5 The parties are unable to agree upon who may administer the water rights set forth in this Agreement. Accordingly, this Agreement does not address or resolve this issue. Each party reserves the right to litigate the issue of administration, if and when the need arises.

8. Severability

8.1 This Agreement is not severable.

9. Successors

9.1 This Agreement shall bind and inure to the benefit of the respective successors of the parties.

10. Entire Agreement

10.1 This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.

11. Effect of Headings

11.1 Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.

12. Multiple Originals

12.1 This Agreement is executed in quintuplicate. Each of the five (5) Agreements with an original signature of each party shall be an original.

13. Effective Date

13.1 This Agreement shall be effective when all of the following events have occurred:

.1 This Agreement is executed; and

.2 The water rights described in Article 5 of this Agreement have been confirmed in a decree in the SRBA and such decree has become final and nonappealable.

The parties have executed this Agreement on the date following their respective signatures.



CECIL D. ANDRUS
Governor, State of Idaho

5-13-92
Date



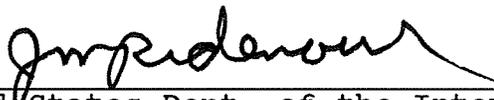
LARRY ECHOHAWK
Attorney General, State of Idaho

5-14-92
Date



F. DAVE RYDALCH
Chair, Idaho Water Resource Board

1/16/1992
Date



United States Dept. of the Interior

1/24/92
Date



United States Department of Justice

1/17/92
Date

LOCATION AND DATE OF LAND RESERVATION

CRATERS OF THE MOON NATIONAL MONUMENT

ATTACHMENT I

LEGEND

Presidential Proclamation
No. 1694 dated May 2, 1924
(43 Stat. 1947)



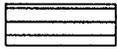
Area A

Presidential Proclamation
No. 1843 dated July 23, 1928
(45 Stat. 2969)



Area B

Presidential Proclamation
No. 1916 dated July 9, 1930
(46 Stat. 3027)



Area C

Presidential Proclamation
No. 3505 dated November 19, 1962
(77 Stat. 960)

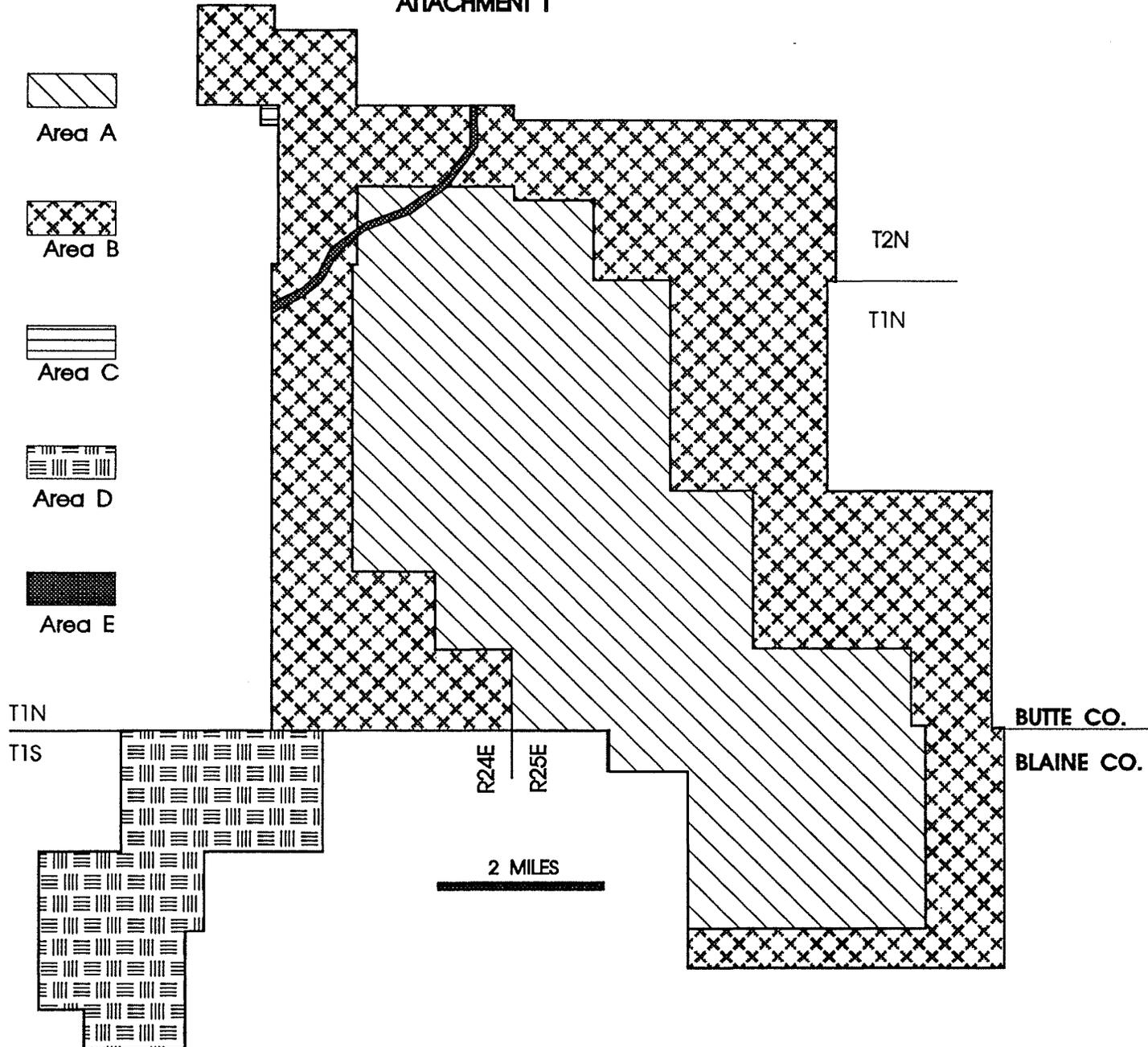


Area D

Presidential Proclamation
No. 2499 dated July 18, 1941
(55 Stat. 1660)



Area E



ATTACHMENT II

Presidential Proclamations

Craters of the Moon National Monument

- A. Presidential Proclamation No. 1694 dated May 2, 1924
(43 Stat. 1947)
- B. Presidential Proclamation No. 1843 dated July 23, 1928
(45 Stat. 2959)
- C. Presidential Proclamation No. 1916 dated July 9, 1930
(46 Stat. 3029)
- D. Presidential Proclamation No. 3506 dated November 19, 1962
(77 Stat. 960)
- E. Presidential Proclamation No. 2499 dated July 18, 1941
(55 Stat. 1660)

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

[No. 1694—May 2, 1924—3 Stat. 1947]

WHEREAS, there is located in townships one south, one and two north, ranges twenty-four and twenty-five east of the Boise Meridian, in Butte and Blaine Counties, Idaho, an area which contains a remarkable fissure eruption together with its associated volcanic cones, craters, rifts, lava flows, caves, natural bridges, and other phenomena characteristic of volcanic action which are of unusual scientific value and general interest; and

WHEREAS, this area contains many curious and unusual phenomena of great educational value and has a weird and scenic landscape peculiar to itself; and

WHEREAS, it appears that the public interest would be promoted by reserving these volcanic features as a National Monument, together with as much land as may be needed for the protection thereof.

NOW, THEREFORE, I, Calvin Coolidge, President of the United States of America, by authority of the power in me vested by section two of the act of Congress entitled, "An Act for the preservation of American antiquities," approved June eighth, nineteen hundred and six (34 Stat., 225) do proclaim that there is hereby reserved from all forms of appropriation under the public land laws, subject to all valid existing claims, and set apart as a National Monument all that piece or parcel of land in the Counties of Butte and Blaine, State of Idaho, shown as the Craters of the Moon National Monument upon the diagram hereto annexed and made a part hereof.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy or remove any feature of this Monument and not to locate or settle upon any of the lands thereof.

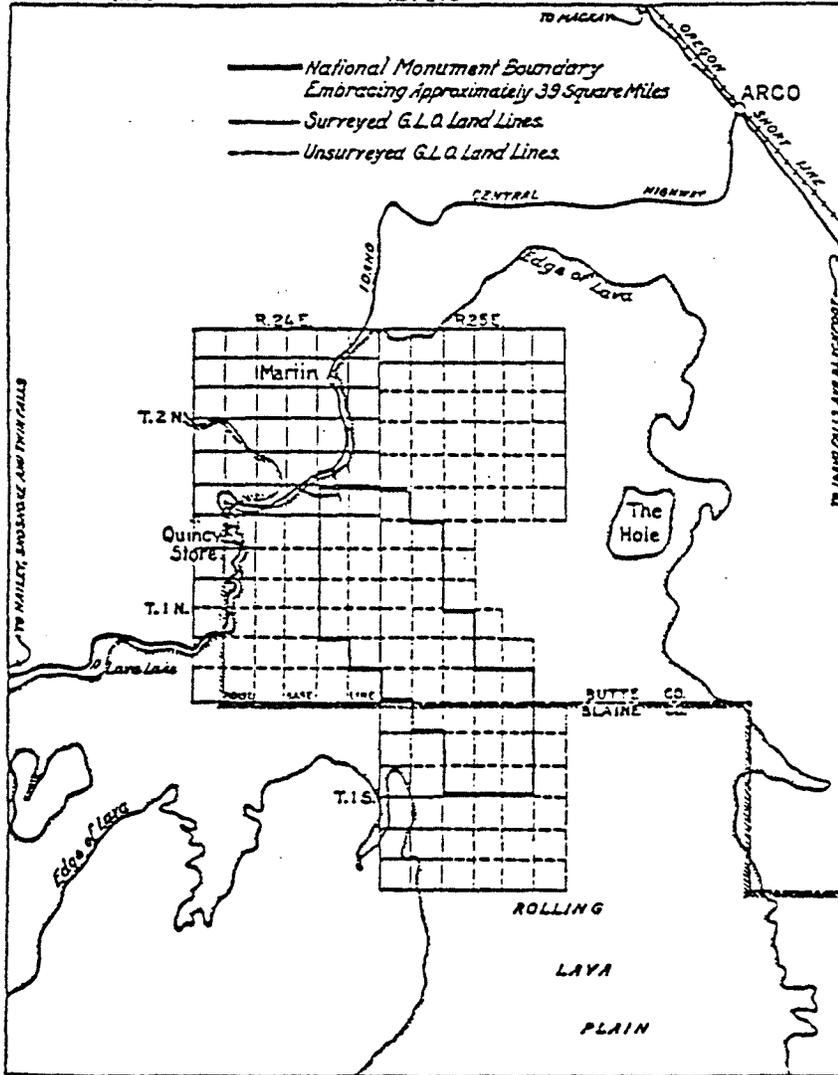
The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this Monument as provided in the act of Congress entitled, "An Act to establish a National Park Service and for other purposes," approved August twenty-fifth, nineteen hundred and sixteen (39 Stat., 335) and Acts additional thereto or amendatory thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE in the City of Washington this 2d day of May in the year of our Lord one thousand nine hundred and twenty-four and of the [SEAL] Independence of the United States of America the one hundred and forty-eighth.

CALVIN COOLIDGE

By the President:
CHARLES E. HUGHES,
Secretary of State.



CRATERS OF THE MOON NATIONAL MONUMENT

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

[No. 1843—July 23, 1923—45 Stat. 2959]

WHEREAS, it appears that the public interest would be promoted by adding to the Craters of the Moon National Monument in the State of Idaho, certain adjoining lands for the purpose of including within said monument certain springs for water supply and additional features of scientific interest located thereon.

NOW, THEREFORE, I, Calvin Coolidge, President of the United States of America, by authority of the power in me vested by section two of the act of Congress entitled, "An Act for the Preservation of American antiquities", approved June eighth, nineteen hundred and six (34 Stat., 225), do proclaim that Sections sixteen, twenty-one, twenty-two, twenty-five, twenty-six, twenty-seven, and thirty-four in Township two North, Range twenty-four East; Unsurveyed Sections twenty-seven, twenty-eight, twenty-nine, thirty, thirty-two, thirty-three and thirty-four in Township two North, Range twenty-five East; Unsurveyed Sections three, ten, fifteen, twenty-two, twenty-six, twenty-seven, thirty-four, thirty-five and thirty-six in Township ten, fifteen, sixteen, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven and thirty-six in Township one North, Range twenty-five East; Unsurveyed Sections one, twelve, thirteen and the north half of Sections twenty-one, twenty-two, twenty-three and twenty-four in Township one South, Range twenty-five East; all Boise Meridian, Idaho; are hereby reserved from all forms of appropriation under the public land laws, subject to all valid existing claims, and set apart as an addition to the Craters of the Moon National Monument and that the boundaries of the said National Monument are now as shown on the diagram hereto annexed and made a part hereof.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy or remove any feature of this Monument and not to locate or settle upon any of the lands thereof.

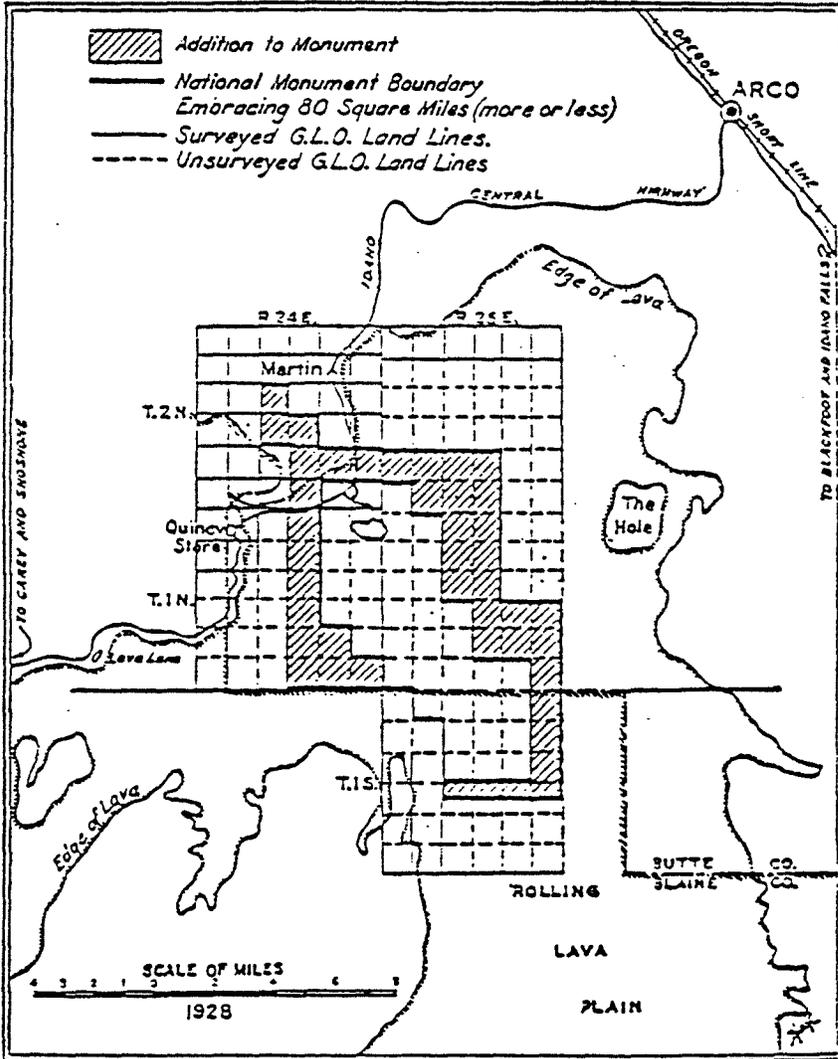
The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this Monument as provided in the Act of Congress entitled "An Act to establish a National Park Service and for other purposes," approved August twenty-fifth, nineteen hundred and sixteen (39 Stat., 535) and Acts additional thereto or amendatory thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 23 day of July in the year of our Lord one thousand nine hundred and twenty-eight and of the [SEAL] Independence of the United States of America the one hundred and fifty-third.

CALVIN COOLIDGE.

By the President:
FRANK B. KELLOGG,
Secretary of State.



CRATERS OF THE MOON NATIONAL MONUMENT

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

[No. 1916—July 9, 1930—46 Stat. 3029]

WHEREAS lot 1, section 28, township 2 north, range 24 east, Boise meridian, Idaho, is bounded on the north and east by the Craters of the Moon National Monument; and

WHEREAS said lot 1, section 28, contains a spring which is needed to furnish the said monument with an adequate water supply; and

WHEREAS said lot 1, section 28, is vacant unappropriated public land of the United States;

NOW, THEREFORE, I, Herbert Hoover, President of the United States of America, do proclaim that the lands hereinafter described shall be, and are hereby, added to and included within the Craters of the Moon National Monument, and as part of said monument shall be, and are hereby, made subject to the provisions of the act of August 25, 1916 (39 Stat. 535), entitled "An act to establish a national park service, and for other purposes" and all acts supplementary thereto and amendatory thereof and all other laws and rules and regulations applicable to, and extending over, the said monument:

BOISE MERIDIAN

In township 2 north, range 24 east, lot 1, section 28.

Nothing herein shall affect any existing valid claim, location, or entry on said lands made under the land laws of the United States whether for homestead, mineral, right of way, or any other purposes whatsoever, or shall affect the right of any such claimant, locator, or entryman to the full use and enjoyment of his land.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 9th day of July, in the year of our

Lord nineteen hundred and thirty, and of the Independence of
[SEAL] the United States of America the one hundred and fifty-fifth.

HERBERT HOOVER.

By the President:

HENRY L. STIMSON,

Secretary of State.

Proclamation 3506
ADDITION TO THE CRATERS OF THE MOON NATIONAL
MONUMENT, IDAHO

November 19, 1962

By the President of the United States of America
A Proclamation

43 Stat. 1947.

WHEREAS the Craters of the Moon National Monument, Idaho, established by Proclamation No. 1694 of May 2, 1924, was reserved and set apart as an area that contains a remarkable fissure eruption together with its associated volcanic cones, craters, rifts, lava flows, caves, natural bridges, and other phenomena characteristic of volcanic action that are of unusual scientific value; and

WHEREAS it appears that it would be in the public interest to add to the Craters of the Moon National Monument a 150-acre kipuka, a term of Hawaiian origin for an island of vegetation completely surrounded by lava, that is scientifically valuable for ecological studies because it contains a mature, native sagebrush-grassland association which has been undisturbed by man or domestic livestock; and to add to the monument the intervening lands between the kipuka and the present monument boundaries:

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States of America, by virtue of the authority vested in me by Section 2 of the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431), and subject to valid existing rights do proclaim that the following-described lands are hereby added to and reserved as a part of the Craters of the Moon National Monument:

BOISE MERIDIAN, IDAHO

T. 1 S., R. 24 E.
sec. 3, W- $\frac{1}{2}$
All of section 4, 5, 8, 9, 17, 18 and 19
sec. 10, W- $\frac{1}{2}$
sec. 20, W- $\frac{1}{2}$ and W- $\frac{1}{4}$ E- $\frac{1}{2}$
sec. 20, NW- $\frac{1}{4}$ and W- $\frac{1}{2}$ NE- $\frac{1}{4}$
sec. 30, NE- $\frac{1}{4}$;
comprising 5,260 acres, more or less.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy or remove any of the features or objects of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this nineteenth day of November in the year of our Lord nineteen hundred and sixty-two, and [SEAL] of the Independence of the United States of America the one hundred and eighty-seventh.

JOHN F. KENNEDY

By the President:

DEAN RUSK,
Secretary of State.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION

[No. 2499—July 18, 1941—55 Stat. 1660]

WHEREAS it appears that certain public land which is now a part of the Craters of the Moon National Monument in the State of Idaho, established by proclamation of May 2, 1924, 43 Stat. 1947, and enlarged by proclamations of July 23, 1928, 45 Stat. 2959, and July 9, 1930, 46 Stat. 3029, is not necessary for the proper care and management of the objects of scientific interest situated on the lands within the said monument; and

WHEREAS it appears that such land is needed for the construction of Idaho State Highway No. 22, by the State of Idaho:

NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States of America, under and by virtue of the authority vested in me by section 2 of the act of June 8, 1906, c. 3060, 34 Stat. 225, U. S. C., title 16, sec. 431, do proclaim that a strip of land situated in section 3, Township 1 North, Range 24 East, and sections 25, 34, 35 and 36, Township 2 North, Range 24 East, Boise Meridian, Butte County, Idaho, as shown on a map prepared by the Department of Public Works, Bureau of Highways, State of Idaho, on file in the General Land Office, Department of the Interior, bearing the title

"FAP 123-E(1)

Map showing right-of-way across

Craters of the Moon National

Monument—Butte County—Idaho

February 1941 — Scale 1"=400'

is hereby excluded from the Craters of the Moon National Monument.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 18th day of July in the year of our Lord nineteen hundred and forty-one, and of the Independence [SEAL] of the United States the one hundred sixty-sixth.

By the President:

SUMNER WELLES

Acting Secretary of State.

FRANKLIN D. ROOSEVELT.

**DEPARTMENT OF
ENERGY
AGREEMENT**

WATER RIGHTS AGREEMENT

* * * *

**Between The State Of Idaho
And The United States,
For The United States
Department of Energy**

WATER RIGHTS AGREEMENT
BETWEEN THE STATE OF IDAHO AND
THE UNITED STATES,
FOR THE UNITED STATES DEPARTMENT OF ENERGY

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APPENDIX

Notice of Claim to Water Right No. A25-07263
Notice of Claim to Water Right No. A35-12693
Notice of Claim to Water Right No. A36-13983
Notice of Claim to Water Right No. A86-10673

WATER RIGHTS AGREEMENT BETWEEN THE STATE OF IDAHO
AND THE UNITED STATES, FOR THE UNITED STATES DEPARTMENT OF ENERGY

The State of Idaho and the United States agree as follows:

1. Preamble

- 1.1 The State of Idaho, pursuant to Idaho Code § 42-1406A (Supp. 1989) has commenced a general adjudication of the rights to the use of the water from that portion of the Snake River Basin located in the State of Idaho.
- 1.2 Idaho Code § 42-1409(3) (Supp. 1989) provides that a claimant of a water right reserved under federal law may submit a negotiated agreement between the State of Idaho and the claimant in lieu of a notice of claim.
- 1.3 Executive Order Nos. 85-9 and 87-9 provide that it is in the interest of the State of Idaho to quantify Federal Reserved Water Rights through negotiations.
- 1.4 The State of Idaho and the United States desire to exercise the right to submit a negotiated agreement quantifying, in part, the rights of the United States to the use of water, pursuant to both federal and Idaho law for the Department of Energy within the Snake River Basin in Idaho.

2. Definitions

- 2.1 The following definitions apply for the purpose of this Agreement:
 - .1 "Acre foot" or "AF" means the amount of water necessary to cover one acre of land to a depth of one

foot and is equivalent to 43,560 cubic feet or 325,851 gallons.

- .2 "Acre feet per year" or "AFY" means the number of acre feet of water used in a calendar year commencing January 1 and ending December 31.
- .3 "Aquifer" means a geologic formation, group of formations, or part of a formation or other body of earth material capable of transmitting water at a rate sufficient for water supply purposes.
- .4 "Cubic feet per second" or "CFS" is a unit expressing the rate of discharge. One CFS is equivalent to 448.83 gallons per minute.
- .5 "Consumptive use" means the amount of water that is used by any action or process and is not returned to the water system.
- .6 "Director" means the Director of the Idaho Department of Water Resources and his successors.
- .7 "Diversion" means the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other act of man, or the impoundment of water in a reservoir.
- .8 "Department of Energy" means the United States Department of Energy, which was created by the Department of Energy Organization Act of August 4, 1977, Pub. L. 95-91, 91 Stat. 565, and its successors.

- .9 "IDWR" means the Idaho Department of Water Resources and its successors.
- .10 "Idaho National Engineering Laboratory" or "INEL" refers to an area of land approximately 890 square miles in size and 50 miles west of Idaho Falls, which was originally acquired or reserved in the following public land orders or condemnation cases:
- .i Public Land Order 318 dated May 13, 1946, withdrew and reserved public lands for the use of the Department of Navy as part of a Naval Proving Ground. The public and nonpublic lands aggregate 156,832.75 acres.
 - .ii Public Land Order 545 dated January 7, 1949. This public land order withdrew and reserved 640 acres of public lands for the use of the Department of Navy as part of a Naval Proving Ground.
 - .iii Public Land Order 637 dated April 7, 1950, withdrew and reserved public lands for the use of the United States Atomic Energy Commission as a Reactor Testing Station. The public and nonpublic lands aggregate 259,549.8 acres.
 - .iv Public Land Order 691 dated December 5, 1950, transferred from the Department of Navy to the Atomic Energy Commission the lands reserved by

Public Land Order Nos. 318 and 545 for use in the atomic-energy program.

- .v Public Land Order 1770 dated December 19, 1958, withdrew and reserved 123,648 acres of public lands for use of the Atomic Energy Commission in connection with the National Reactor Testing Station in the vicinity of Arco, Idaho.
- .vi United States v. 18,217.58 Acres of Land, More or Less, in Butte and Jefferson Counties, Idaho, No. 1227E (D. Idaho October 29, 1945) (preliminary order of condemnation).
- .vii United States v. 15,357.16 Acres of Land in Butte, Bingham, and Jefferson Counties, State of Idaho, No. 1624 (D. Idaho September 19, 1951) (final order of condemnation).
- .viii United States v. 8617.87 Acres of Land, More or Less, in the Counties of Clark, Butte, Jefferson, Bonneville, and Bingham, State of Idaho, No. 2160 (D. Idaho April 27, 1959) (judgment).
- .11 "Parties" means the United States and the State of Idaho.
- .12 "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the State of Idaho or any political subdivision, the United States, an Indian tribe, or any other public or

private entity. Idaho Code § 42-1401A(8) (Supp. 1989).

- .13 "Snake River Basin Adjudication" or "SRBA" means Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System, which was commenced pursuant to Idaho Code § 42-1406A (Supp. 1989).
- .14 "State" means the State of Idaho.

3. Scope of Agreement

- 3.1 The purpose of this Agreement is to quantify all existing water rights and claims to water rights of the United States under state and federal law for the use by the Department of Energy in the Snake River Basin in the State, except for the following claims to water rights: Claim Nos. A25-07263, A35-12693, A36-13983 and A86-10673, which have been lodged in the SRBA. Copies of the claims are attached hereto and incorporated herein by reference.
- 3.2 This Agreement relates to all waters on, under, adjacent to, or otherwise appurtenant to the Department of Energy facilities or lands in the State, except as noted in Article 3.1.

4. Parties and Authority

- 4.1 The Governor has authority to negotiate and execute this Agreement pursuant to Idaho Code § 67-802 (1989) and 1990 Idaho Sess. L., ch. 259.
- 4.2 The Idaho Water Resource Board has authority to negotiate and execute this Agreement pursuant to Idaho Constitution, art. XV, § 7, Idaho Code § 42-1734(3) (Supp. 1989) and Executive Order Nos. 85-9 and 87-9.
- 4.3 The Idaho Attorney General has authority to negotiate and execute this Agreement pursuant to his authority to settle litigation as provided for in Idaho Constitution, art. IV, § 1, and Idaho Code § 67-1401 (Supp. 1989) and 1990 Idaho Sess. L., ch. 259.
- 4.4 The United States Attorney General and any duly designated official of the Department of Justice have authority to execute this Agreement pursuant to the authority to settle litigation contained in 28 U.S.C. § 516-517.
- 4.5 The Secretary of the Department of Energy and any duly designated official of the Department of Energy have authority to execute this Agreement pursuant to The Department of Energy Organization Act of August 4, 1977, Pub. L. 95-91, 91 Stat. 565.

5. Water Right of the United States

- 5.1 The name and address of the claimant for the water right negotiated and settled by this Agreement is as follows:

United States of America
c/o Department of Energy
Idaho Operations Office
785 DOE Place
Idaho Falls, Idaho 83402

5.2 Water right for consumptive use at the INEL:

- .1 Right No. A34-10901
 - .i Source: Ground water
 - .ii Amount of Water: The maximum rate of diversion from any and all wells shall not exceed 80 CFS, and the maximum annual diversion shall not exceed 35,000 AFY.
 - .iii Date of Priority: April 7, 1950
 - .iv Points of Diversion: Any point within the boundaries of the INEL. Existing and new points of diversion will be reported as described in Article 6.2.
 - .v Purpose of Use: The primary purposes authorized by Congress for INEL.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: Not to exceed 35,000 AFY.
 - .viii Place of Use/Legal Description of Reservation: Any place within the boundaries of the INEL.
 - .ix Basis of Right: Federal Reserved Water Right.
 - .x Comments: None.

5.3 The United States may also divert water for fire suppression at INEL in accordance with the following

paragraph proposed to be included in the final decree in this matter:

"The use of water for fire suppression benefits the public. Water diverted for fire suppression may be taken randomly, without a definition of the specific elements of a recordable water right, and if so diverted for fire suppression, existing water rights shall not be diminished."

- 5.4 The right described in this Agreement is a Federal Reserved Water Right with all the characteristics appertaining thereto. Non-use of all or any part of the Federal Reserved Water Right shall not constitute a relinquishment, forfeiture or abandonment of the right.

6. Administration of Water Rights

- 6.1 Administration. The parties are unable to agree upon whether the issue of administration is ripe or otherwise appropriate for decision in the SRBA, and if so, whether and to what extent the Director has authority to administer federal water rights. Accordingly, this Agreement does not address this issue except as expressly provided in Article 6.2. Each party reserves the right to litigate the issue of administration, if and when the need arises.

6.2 Access to and Monitoring of Measuring Devices

- .1 The State and the United States mutually assure and agree to provide access and cooperation for

installation and utilization of measuring devices needed for management of the water resources on INEL; provided, however, that access to the INEL will be in accordance with all federal laws and regulations governing access to the INEL.

- .2 The Department of Energy voluntarily agrees to provide the State with a comprehensive inventory of all wells (monitoring, production and disposal) at or relating to activities at the INEL. This inventory will include information on the total depth of each well and depth to water, detailed well construction information, well logs, usage information, including detailed information on quantity and quality of fluids discharged, and dates of installation and retooling. Department of Energy will update such information to reflect any plans to construct and actual construction of new wells. As long as paragraph C.4. of Attachment A of the Environmental Oversight and Monitoring Agreement between the Department of Energy and the State of Idaho dated May 21, 1990 remains in effect as originally written, the report provided to the State pursuant to that paragraph will constitute compliance with this paragraph. If paragraph C.4. of Attachment A of the Environmental Oversight and Monitoring Agreement is amended or no longer effective, then the

Department of Energy will separately comply with this paragraph unless otherwise mutually agreed.

- .3 The Department of Energy will continue to maintain the water measuring devices it has installed on each existing well used to deliver its water right described in Article 5. The Department of Energy may develop new points of diversion for the water right described in Article 5 and agrees to install a water measuring device on each new point of diversion. The Department of Energy shall monitor each measuring device used to deliver the water right described in Article 5 and report the results each year to the IDWR by March 1st of the year after the reporting year or at such other time as requested, upon reasonable notice. Results reported to IDWR shall include annual volume of water diverted, maximum and average diversion rates and pumping level (water depth).
- .4 IDWR shall provide the Department of Energy, at its request, any water district or water measurement report prepared by or for IDWR and any other requested nonprivileged public information in the possession of the State concerning the use of water by other persons.

7. Water Transfer

- 7.1 The United States shall not transfer the Federal Reserved Water Right described in Article 5.2.1.

8. Finality of Settlement Agreement

- 8.1 The parties understand that this Agreement will be submitted to the Director in lieu of a notice of claim in the SRBA, that the Director will submit this Agreement and an abstract of the Agreement to the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls as part of a Director's Report, and that state law allows other persons not signatory to this Agreement to file objections to the approval of this Agreement by the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls.
- 8.2 The United States agrees that License Nos. 34-2292 [old no. 21253] and 34-2278 [old no. 19993] will be superseded by the water right identified herein, only upon completion of all judicial proceedings, including appeals if any, together with entry of a final decree containing the water right described in this Agreement. The parties agree that water right claim nos. A25-07263, A35-12693, A36-13983, and A86-10673 shall not be affected by the execution of this Agreement and that water right claim nos. A25-07263, A35-12693, A36-13983, and A86-10673 will be adjudicated in accordance with Chapter 14 of Title 42 of Idaho Code to the extent it is applicable.
- 8.3 The parties agree to jointly support and defend this Agreement against any and all objections or other

challenges that may arise in any phase of the SRBA, including any appeals, and in securing any necessary ratification of the Agreement.

- 8.4 The United States' water right for the INEL confirmed in Article 5 shall be final and conclusive as to all parties to the SRBA upon the completion of all judicial proceedings, including any appeals, relative to this Agreement.

9. Disclaimers and Reservation of Rights

- 9.1 This Agreement contains a complete statement of all water rights held by the United States on behalf of the Department of Energy. The United States claims no other existing water rights, under either state or federal law, to the use of water for the Department of Energy within the Snake River Basin in Idaho.
- 9.2 The United States on behalf of the Department of Energy disclaims any right to seek the maintenance of any specific pumping level for the water right described in Article 5.2.
- 9.3 The United States on behalf of the Department of Energy disclaims any interest in or claim to water for the Department of Energy from the Snake River Basin Water System as defined in the SRBA other than as expressly set forth in this Agreement.
- 9.4 This Agreement represents a settlement of a water right that is unique to the INEL. The parties are unable to

agree on whether the Federal Reserved Water Rights doctrine extends to ground water. In order to avoid litigation, however, this Agreement recognizes a Federal Reserved Water Right, as described in Article 5. Because this Agreement is a resolution of a disputed claim, it is not and shall not be used as precedent for any other Federal Reserved Water Right claim in the SRBA.

9.5 This Agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this Agreement.

9.6 Entry of judgment as set forth above has been consented to by the parties without trial or adjudication of fact or law herein and without the judgment constituting evidence or an admission by any party, with respect to any such issue, which is, will be, or could be litigated in any proceeding other than the SRBA. See McShan v. Omega Louis Brandt et Frere, S.A., 536 F.2d 516, 519 (2d Cir. 1976). Once this Agreement becomes effective as provided by Article 15.1, the water right described in Article 5 of this Agreement shall be binding upon all parties to the SRBA, whether signatory to the Agreement or not.

9.7 Nothing in this Agreement shall be construed or interpreted:

- .1 To establish any standard to be used for the quantification of Federal Reserved Water Rights in any judicial or administrative proceeding;
- .2 To restrict the acquisition by the United States of any appropriative water right under State law; provided, however, that prior to applying for a permit to appropriate water for use at the INEL, the United States must demonstrate that the water right described in Article 5 is fully used at the time the application is made;
- .3 To restrict the United States' power to reserve land or water rights in the future, in accordance with applicable law;
- .4 To restrict the United States' power to acquire land in the future, in accordance with applicable law;
- .5 To determine the relative rights inter sese of persons using water under the authority of the State or to authorize the taking of a water right which is vested under state or federal law;
- .6 To limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;
- .7 To limit the authority of the United States to manage its lands or water rights in accordance with the

Constitution, statutes, regulations, and procedures of the United States;

- .8 To preclude the State or the United States from exercising whatever authority each sovereign government may have to regulate water quality;
- .9 To apply to any water rights of the United States other than its water rights for use by the Department of Energy in Idaho;
- .10 To commit or obligate the United States to expend funds that have not been appropriated and budgeted;
- .11 To restrict, enlarge, or otherwise determine the jurisdiction of any court, state or federal; and
- .12 To constitute an admission by the State of the validity of Water Right Claim Nos. A25-07263, A35-12693, A36-13983 and A86-10673.

10. Severability

- 10.1 This Agreement is not severable.

11. Successors

- 11.1 This Agreement shall bind and inure to the benefit of the respective successors of the parties.

12. Entire Agreement

- 12.1 This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either

oral or written between them other than are herein set forth.

13. Effect of Headings

13.1 Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.

14. Multiple Originals

14.1 This Agreement is executed in quadruplicate. Each of the four (4) Agreements with an original signature of each party shall be an original.

15. Effective Date

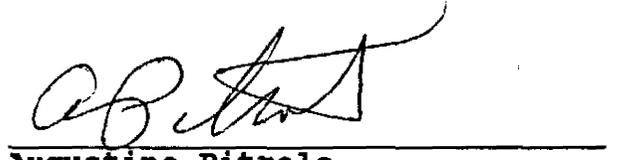
15.1 This Agreement shall be effective when all of the following events have occurred:

- .1 This Agreement is executed; and
- .2 The right described in Article 5 of this Agreement has been confirmed in a decree in the SRBA and such decree has become final and nonappealable.

The parties have executed this Agreement the date following their respective signatures.


Cecil Andrus
Governor, State of Idaho

Date

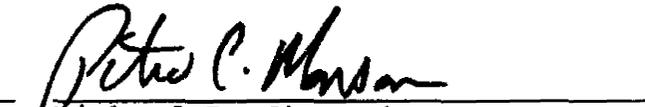

Augustine Pitrolo
Manager, Idaho Operations Office
U.S. Department of Energy

JUL 1 1990

Date


Jim Jones
Attorney General,
State of Idaho

Date


for Richard B. Stewart
Assistant Attorney General
Land and Natural Resources
Division
U.S. Department of Justice

7/20/90

Date


Gene Gray, Chair
Idaho Water Resource Board

Date

RECEIVED

JUN 23 2003

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

Department of Water Resources FILED

2003 JUN 20 PM 3 26

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

APR - 3 2003

LODGED

By _____ Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: SRBA

ORDER OF PARTIAL DECREE

For Water Right 34-10901

Case No. 39576

(United States Department of Energy, Idaho
National Engineering and Environmental
Laboratory)

As a result of negotiations, the State of Idaho and United States entered into a Water Rights Agreement between the State of Idaho and the United States Department of Energy, dated July 20, 1990. The State of Idaho lodged the Water Rights Agreement with the Court by letter dated July 26, 1990. The agreement was also lodged with the Idaho Department of Water Resources in lieu of a claim for the Department of Energy.

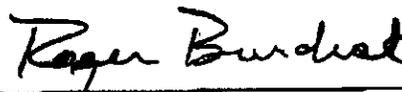
The claim was reported in the Director's Report, Part II for Basin 34, filed November 17, 1992. Objections to the Director's Report for Basin 34 Parts I and II were required to be filed no later than March 1, 1993. No objections were filed to the water right claim no 34-10901.

The SRBA Court's register of action indicates that a Partial Decree was issued for this water right on January 15, 1998. However, neither the Clerk of the Court, the Idaho Department of Water Resources nor counsel and staff for the United States have been able to locate a copy of any Partial Decree actually issued on that date. It therefore appears that although the District Court intended to

enter a partial decree, either the decree has been lost, or no such decree was ever signed by the District Court.

Therefore, IT IS ORDERED that water right 34-10901 is hereby decreed nun pro tunc as set forth in the attached *Partial Decree Pursuant to I.R.C.P 54(b)*.

DATED 6-20-03



ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF SERVICE

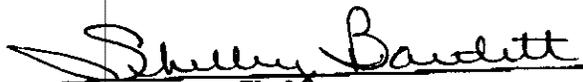
I certify that a true and correct copy of the ORDER OF PARTIAL DECREE was mailed on ~~April 20~~, 2003, with sufficient first class postage prepaid to the following:

~~June~~
Director of IDWR
PO Box 83720
Boise, ID 83720-0098

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U.S. Department of Justice
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Chief Deputy Clerk

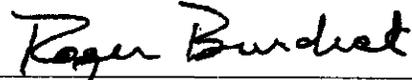
ORDER OF PARTIAL DECREE

Page 3

TOTAL P.08

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

HELLS CANYON AGREEMENT

UNITED STATES OF AMERICA

STATE OF IDAHO

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

IN RE: SRBA

)
)
) **Subcase No. 79-13597**
) **Hells Canyon National Recreation Area Act**
) **Claims (Encompassing Subcases 79-14054 through**
) **79-14079; and to further encompass and be consolidated**
) **with Subcases 78-12200 through 78-12205)**
)
)

CASE NO. 39576

) **Stipulation and Joint Motion for Order**
) **Approving Stipulation and Entry of Partial**
) **Decrees**
)
)
)

STIPULATION

The United States of America (“United States”), the State of Idaho (“State”), and Idaho Power Company, (the State and Idaho Power referred to as “Objectors;” the United States and Objectors sometimes referred to as the “parties”), who constitute all the parties to these consolidated subcases, hereby stipulate and agree, by and through their respective undersigned counsel, as follows:

1. Stipulation to Entry of Partial Decrees. The United States and Objectors stipulate to entry of the partial decrees for the United States' Hells Canyon National Recreation Area ("HCNRA") Act federal reserved water rights claims numbered 78-12200 through 78-12205 and 79-14054 through 79-14079, attached hereto and incorporated herein as Attachments 1 through 32 (the "Partial Decrees"), all parties to bear their own costs and fees. The Partial Decrees confirm the United States' federal reserved water rights pursuant to the HCNRA Act, as recognized by the Idaho Supreme Court in *Potlatch v. United States*, 134 Idaho 916, 12 P.3d 1260 (2000), and set forth the quantities and terms of those rights. The Partial Decrees quantify these federal reserved water rights based on identified flows and lake levels on 32 streams and lakes within the HCNRA, subject to subordinations to certain existing and future rights and uses, and the preclusion of out-of-basin diversions above the ending point or point of diversion of each of the respective federal reserved water rights as identified in the Partial Decrees. Based on the agreement of the parties to quantify the HCNRA federal reserved water right specifically on these 32 separate water sources within the HCNRA, the Idaho Department of Water Resources ("IDWR") has assigned separate water right numbers to each of these sources. IDWR has assigned water right numbers 79-14054 through 79-14079 to the Partial Decrees for the 26 streams and lakes that are located in IDWR Administrative Basin No. 79 as described in Partial Decree Nos. 79-14054 through 79-14079 (the "Basin 79 Partial Decrees"). These water rights are within Claim No. 79-13597 and are part of this Subcase No. 79-13597. IDWR has assigned water right numbers 78-12200 through 78-12205 to the Partial Decrees for the six lakes that are located in IDWR Administrative Basin 78 as described in Partial Decree Nos. 12200 through 12205 (the "Basin 78 Partial Decrees"). The Basin 78 Partial Decrees will be the subject of late notices of claim, as addressed in paragraphs 7 and 8 below. The parties intend that, after due

notice, these Basin 78 claims will be consolidated into this Subcase No. 79-13597. The parties request the Snake River Basin Adjudication Court (“SRBA Court” or “Court”) to approve, by granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and entering the attached proposed Order, the quantification of these HCNRA federal reserved water rights as agreed to by the parties and set forth in the Partial Decrees. The parties also agree to entry of a final decree incorporating the Partial Decrees.

2. Administration of Water Rights.

a. Enforcement. The State, through IDWR shall distribute water to the federal reserved water rights set forth in this Stipulation and the Partial Decrees and all other hydraulically connected water rights, regardless of subbasin location, above the ending point or point of diversion of the respective federal reserved water rights in accordance with priority dates, quantities and all other elements of the rights as provided in this Stipulation and the Partial Decrees, and applicable law at all times when there is a hydraulic connection between the federal reserved water right and the right to be regulated.

b. Creation of Water Districts. At present, the limited number of water rights above the ending point or point of diversion of the federal reserved water rights confirmed by the Partial Decrees do not justify the creation of a water district for purposes of administration. If in the future any party believes that creation of a water district above the ending point or point of diversion of any of the HCNRA federal reserved water rights is warranted, such party shall be entitled to file a petition with the SRBA Court for an order of interim administration (or, in the event the final SRBA decree has been entered, file a petition with IDWR for administration) of such basin and the other parties to this Stipulation shall not oppose such petition and IDWR will establish a water district for the basin if IDWR determines

that a water district is necessary to properly administer water rights in the basin. The parties agree that, regardless of whether a water district has been established for an area, IDWR will, as necessary: A) collect and record diversion data; B) enforce the water rights in priority; and C) curtail unauthorized or excessive diversions.

c. Administration of New Water Rights. IDWR will condition each water right permit or license issued after the effective date of this Stipulation for a non-de minimis water right upstream from the ending point or point of diversion of any HCNRA federal reserved water right as set forth in this Stipulation to require that each diversion is equipped with lockable controlling works, a measuring device, and a data logger or other suitable device that regularly monitors and records the rate of diversion. The condition will require that the data logger or other suitable device be configured to accept a removable data card or other suitable memory device that must be submitted by the water user to the IDWR or the watermaster on a quarterly basis, for each quarter when diversion occurs.

d. Prevention of Unauthorized Uses. IDWR and the watermaster will utilize all appropriate techniques, including but not limited to remote-sensing, field observation and inventory, coordination with local water users and citizens, and input from other agencies, to identify unauthorized uses of water. IDWR and/or the watermaster will curtail identified unauthorized uses of water based on the authorities of Chapter 6, Title 42, Idaho Code, and IDWR will pursue appropriate civil enforcement action as provided in Idaho Code §§ 42-351 and 42-1701B.

e. Administration of Existing Water Rights. IDWR will curtail unauthorized uses based on the authorities of Chapter 6, Title 42, Idaho Code. 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 §§ 42-351 and 42-1701B.

f. Availability of Water Use Information. IDWR shall provide the United States, at its request, any water measurement reports prepared by or for IDWR and any other information relating to the implementation of this Stipulation, including the basis for all information reported in the subordination database described in paragraph 3.e. below.

g. Coordination. In order to provide for effective water management by IDWR and the watermaster, and to ensure effective communication between interested parties, periodic coordination meetings shall be held as necessary between IDWR, the watermaster, and water users, including representatives of private water users and the federal government. The purposes of such meetings include:

- (1) Agreeing upon management goals;
- (2) Identifying and prioritizing stream reaches or other locales needing improved management to focus the use and attention of available resources;
- (3) Identifying sources of funding for regulation, equipment, and facilities;
- (4) Sharing data and other information and assessing progress in meeting management needs.

Coordination meetings will involve members of the regulated public (advisory committee members) to assure continuing acceptance of the program.

h. United States' Measuring Devices. At present, the rights set forth herein can be administered without gaging devices. In the event gages become necessary for

administration of the federal reserved water rights, the United States will install, maintain and provide Objectors access to such gages as necessary for administration of the water rights confirmed by the Partial Decrees. IDWR agrees to cooperate with the United States in the installation and maintenance of such gages and the State agrees to provide access to state-owned lands for the purpose of installing and maintaining said gages.

i. Remedies. In the event the State fails to administer water rights in accordance with the terms of this Stipulation, the Partial Decrees and applicable law, any party to this Stipulation, upon a satisfactory showing to the SRBA Court, or any successor state court with jurisdiction to enforce the final decree issued by the SRBA Court, of such failure to administer, shall be entitled to an order under the Court's continuing jurisdiction, as described in paragraph 5, compelling the State to properly administer the water rights.

3. Administration of Subordination Provisions of Partial Decrees. The HCNRA federal reserved water rights confirmed by the Partial Decrees are subordinated to certain water rights and uses with points of diversion or impoundment and places of beneficial use within the HCNRA upstream from the ending point or point of diversion of each of the federal reserved water rights. Administration of the subordination provisions shall be as follows:

a. Accounting of Diversion Amounts Under Future Use Subordinations. IDWR will deduct from the subordination amounts provided for in paragraph 10.b.(5) of the Corral Creek and Kirkwood Creek Partial Decrees (Partial Decrees numbered 79-14056 and 79-14061, respectively) the amount of the diversion rate of any decree, permit or license for a water right that IDWR determines will enjoy the benefit of those subordination provisions. If IDWR licenses any right for less than the amount permitted, the amount of the difference will be

credited back to the subordination amount from which the permitted diversion was previously deducted.

b. Diversion Adjustment for Forfeiture or Abandonment. If a water right enjoying the benefit of subordination provision 10.b.(5) of the Corral Creek and Kirkwood Creek Partial Decrees (other than water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights as defined in those paragraphs of the Partial Decrees), is lapsed, forfeited, or abandoned, the diversion rate will be added to the applicable subordination amount. The amount of diversion rate to be added to the applicable subordination will be the same quantity of subordination assigned to the water right at the time the water right was lost.

c. Water Right Database. IDWR will maintain a publicly available database of water right records on file with IDWR that are above the ending point or point of diversion of each HCNRA federal reserved water right. The database will identify the statutory elements for each active water right record.

d. Subordination Accounting Database. In the normal course of application and claim processing, IDWR will maintain publicly available information for purposes of implementation of the subordinations provided under the Partial Decrees. The data will:

(1) identify all accepted applications for permit and all water right claims with points of diversion located upstream from the ending points or points of diversion of the water rights confirmed by the Partial Decrees;

(2) identify applications for permit that IDWR has determined will enjoy the benefit of any of the subordination provisions of the Partial Decrees, including the information described in paragraph 3.e.(1) below;

(3) separately identify those water rights decrees, permits and licenses that come within the applicable subordination provision;

(4) with respect to water rights decrees, permits and licenses that come within the future use subordination 10.b.(5) of the Corral Creek and Kirkwood Creek Partial Decrees, identify the diversion rate, including any reductions in permitted amounts as licensed, to be credited to the applicable future use subordination;

(5) with respect to forfeited, abandoned or lapsed water rights as identified in paragraph 3.b, identify those rights and the diversion that IDWR has credited the applicable future use subordination as described in paragraph 3.b above;

(6) identify all accepted applications for permit and all water right claims that IDWR has determined will, if approved, constitute water rights of the United States, instream flow water rights, nonconsumptive water rights or replacement water rights within the meaning of those terms as used in paragraph 10.b.(5)(B) of the Corral Creek and Kirkwood Creek Partial Decrees and that would otherwise be deducted from the subordination amounts set forth in paragraph 10.b.(5)(A) of these Partial Decrees, and identify all water rights decrees, permits and licenses for water rights that IDWR has determined constitute water rights of the United States, instream flow water rights, nonconsumptive water rights or replacement water rights as described above; and

(7) set forth a running total of the amounts of future use subordination remaining available for appropriation under paragraph 10.b.(5) of the Corral Creek and Kirkwood Creek Partial Decrees. IDWR will make available to the United States or any other party upon request any and all documentation concerning the above referenced matters.

“Publicly available” as used in this Stipulation means remote computer access or other similar

future technology and the ability to request, on an as needed basis, composites of all water right records on contemporary media in a form that can be manipulated with contemporary technology (software and hardware). IDWR will review any comments or suggestions made by any of the parties concerning the adequacy of this records system.

e. Subordination Implementation and Review.

(1) IDWR will include in the public notice of any application for permit that IDWR has determined will enjoy the benefit of any of the subordination provisions, the subordination provision that IDWR has determined is applicable to the application and, with respect to the subordinations provided in paragraph 10.b.(5) of the Corral Creek and Kirkwood Creek Partial Decrees, the diversion amount applied for that IDWR has determined will enjoy the benefit of the identified subordination provision. This subordination information will be posted to the subordination accounting database concurrently with issuance of the public notice along with the remaining balance of available diversion rate for the applicable subordination.

(2) Upon issuance of a water right permit that IDWR has determined will enjoy the benefit of any of the subordination provisions of the Partial Decrees, IDWR will post to the subordination accounting database the subordination provision that IDWR has determined is applicable to the permit and the affected Partial Decrees and, with respect to the subordinations provided in paragraph 10.b.(5) of the Corral Creek and Kirkwood Creek Partial Decrees, the diversion amount allocated to the permit that IDWR has determined will enjoy the benefit of the identified subordination provision, as well as the remaining balance of available diversion rate for that subordination provision.

(3) Issuance of a license for a water right enjoying subordination under paragraph 10.b.(5) of the Corral Creek and Kirkwood Creek Partial Decrees will be

posted to the subordination accounting database. If the issuance of the license resulted in an adjustment of the diversion rate, the amount of the adjustment will be noted in the posting of the license and reflected in an adjustment of the remaining diversion rate available under the subordination.

(4) Upon entry of a partial decree for a claimed water right that IDWR has determined will enjoy the benefit of any of the subordination provisions of the Partial Decrees, IDWR will post the partial decree to the subordination database along with the identity of the subordination provision that IDWR has determined is applicable to the partial decrees and, with respect to the subordination provision provided in paragraph 10.b.(5) of the Corral Creek and Kirkwood Creek Partial Decrees, the diversion rate allocated to the partial decree that IDWR has determined will enjoy the benefit of the identified subordination provision, as well as the remaining balance of available diversion rate for that subordination provision.

(5) Upon determination that an application for permit or water right claim will, if approved, constitute a water right of the United States, an instream flow water right, a nonconsumptive water right or a replacement water right within the meaning of those terms as used in paragraph 10.b.(5)(B) of the Corral Creek and Kirkwood Creek Partial Decrees that would otherwise be deducted from the subordination amounts set forth in paragraph 10.b.(5)(A) of these Partial Decrees, and upon issuance of a water rights decree, permit or licenses for a water right that IDWR has determined constitutes a water right of the United States, an instream flow water right, nonconsumptive water right or replacement water right as described above, IDWR will post to the subordination accounting database the type of water right IDWR has determined the right to be, the diversion rate applied for, claimed or allocated to the water rights decree, permit or license that IDWR has determined constitutes a water right of

the United States, an instream flow water right, nonconsumptive water right or replacement water right as described above;

(6) Any party may contact IDWR at any time to request additional information concerning the matters described above or to inform IDWR of concerns raised by IDWR's proposed determination with respect to any permit, license, partial decree, abandonment, forfeiture, or lapsing of a water right. Any party may request reconsideration or explanation by IDWR of implementation or proposed implementation of any subordination provision at any time and the parties agree to make a good faith effort to resolve questions and reach agreement regarding implementation of the subordination provisions.

4. Resolution of Disputes Concerning Implementation of Stipulation. The parties and IDWR agree to make good faith efforts to resolve any disputes that arise concerning IDWR's implementation of this Stipulation. IDWR will provide any party requested information concerning the subject matter of any such disputes. In the event the parties are unable to resolve any such dispute, any party may seek review of IDWR's implementation and enforcement of this Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, administration of the subordination provisions of the Partial Decrees in the SRBA Court or any successor state court with jurisdiction to enforce the final decree issued by the SRBA Court. Review shall be de novo and any disputed factual issues shall be decided based upon a preponderance of the evidence. Judicial review must be brought within six months of the challenged action, or within six months of the notification of the challenged action (if notice is required under the terms of the Stipulation), whichever is later.

5. Continuing Jurisdiction. The parties request the SRBA Court, by granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and entering the

attached proposed Order, to retain jurisdiction for the purpose of resolving disputes regarding the implementation and enforcement of this Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, administration of the subordination provisions of the Partial Decrees.

6. Parties' Rights to Object to Claims and Protest Permit Applications.

a. Adjudication Claims. This Stipulation does not affect the right of any party to object to any other claims in the SRBA (i.e., claims other than the United States' HCNRA federal reserved water rights claims which are the subject of this Stipulation) or any claim in any other adjudication. The United States, however, may not assert in any objection that the claim (if subordinated to by the applicable Partial Decree) should be denied or conditioned to protect the flow or lake level of the HCNRA federal reserved water rights subject to this Stipulation.

b. Permit Applications. This Stipulation does not affect the right of any party to protest any application for permit to appropriate water filed with IDWR. The United States, however, may not assert in any protest that the application for permit (if subordinated to by the applicable Partial Decree) should be denied or conditioned (including on public interest grounds) to protect the flow or lake level of any of the HCNRA federal reserved water rights subject to this Stipulation.

7. Late Claims for Basin 78 Water Sources. Objectors hereby stipulate to the SF-4 motions to file late notices of claim attached hereto as Attachments 33-38 (Identification Nos. 78-12200 through 78-12205). The United States shall file these SF-4 motions concurrently with the filing of this Stipulation as described below. IDWR shall prepare a Director's Report that

will include these late notices of claim. Notice of the Director's Report and the late notices of claim shall be provided through the SRBA Docket Sheet as described below.

8. Request for Approval of Stipulation and Entry of Partial Decrees by the SRBA Court.

a. Filing of Settlement Documents with Court, Notice, and Setting of Hearing. The parties agree to submit this Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and the attached SF-4 motions to file late notices of claim for the Basin 78 Partial Decrees to the SRBA Court in full satisfaction of Claim Nos. 78-12200 through 78-12205 and 79-14054 through 79-14079. The parties agree to request the SRBA Court to provide notice of the Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and the SF-4 motions through the SRBA Docket Sheet and by personal notice to Objectors. Upon submittal of these settlement documents to the SRBA Court, the parties will move the Court to set a hearing, at a date after the running of the notice period set forth in the Docket Sheet as determined by the Court, for approval of the Stipulation, approval of the SF-4 motions, and entry of the Basin 79 Partial Decrees (Partial Decree Nos. 79-14054 through 79-14079).

b. Approval of Stipulation, Approval of SF-4 for Basin 78 Partial Decrees, and Entry of Basin 79 Partial Decrees. The parties shall appear at the hearing set to consider approval of the Stipulation to request the SRBA Court to enter the proposed Order attached hereto as Attachment 39 and to jointly present affidavits and such other evidence as required by the Court for approval of the Stipulation, approval of the SF-4 motions and entry of the Basin 79 Partial Decrees. If the SRBA Court grants the stipulated SF-4 motions to file late notices of claim for the Basin 78 Partial Decrees, notice of the Director's Report that includes those late

notices of claim and the opportunity to object will be provided through the SRBA Docket Sheet and by personal notice to Objectors, and the parties shall request the Court to set a hearing, at a date after the running of the notice period set forth in the Docket Sheet as determined by the Court, for approval of the Basin 78 Partial Decrees.

c. Approval of Basin 78 Partial Decrees. At the hearing set to consider approval of the Basin 78 Partial Decrees, the parties shall request the SRBA Court to consolidate the Basin 78 claims with this Subcase No. 79-13597. If no objections are filed to the late notices of claim for the Basin 78 Partial Decrees (other than objections by parties to this Stipulation for the purposes of making them parties to these Basin 78 subcases), the parties shall appear at the hearing to request the SRBA Court to enter the proposed Order attached hereto as Attachment 40 and to jointly present affidavits and such other evidence as required by the Court for entry of the Basin 78 Partial Decrees. If any objections are filed to any of the late notices of claim (other than objections by parties to this Stipulation for the purposes of making them parties to those Basin 78 subcases), the United States and Objectors shall make best efforts to persuade any such objector(s) to join in this Stipulation. If any such objector(s) agree to join in this Stipulation, the parties shall file an addendum to this Stipulation adding such objector(s) as a party to this Stipulation and, if necessary, request the SRBA Court to set a new hearing date (if the previously set hearing date has been vacated) for the presentation of affidavits and such other evidence as required by the Court for entry of the Basin 78 Partial Decrees. If the United States and Objectors are unsuccessful in persuading any such additional objector(s) to join in this Stipulation or in otherwise resolving any such objector's(s') opposition to the late notices of claim, the United States shall prosecute the claims based on the terms of the Partial Decrees and Objectors shall jointly support and defend the claims against any and all such objections.

9. Defense of Stipulation. The parties agree to jointly support and defend the Joint Motion for Order Approving the Stipulation and for Entry of Partial Decrees against any and all objections or other challenges that may arise in any phase of the SRBA, including any appeals. If the SRBA Court fails to approve the Stipulation and to enter the Partial Decrees exactly as set forth herein, the Stipulation is voidable by any party, provided that any party electing to void the Stipulation shall notify the other parties and the Court in writing of that election within 30 days of the order of the Court not approving the Stipulation and/or Partial Decrees as set forth herein. Failure to provide such notification in the manner provided shall result in forfeiture of such right. If the Stipulation is voided, all parties shall retain all existing claims and objections as though no Stipulation ever existed.

10. Stipulation Does Not Affect Statutory or Regulatory Authority. The parties agree that nothing in this Stipulation or the Partial Decrees shall be construed or interpreted:

- a. to establish any standard to be used for the quantification of federal reserved water rights; or
- b. to limit or affect the authority of the United States or the State provided by statute or regulation.

11. Stipulation Not to be Used Against Parties. The United States and Objectors agree and request the SRBA Court to confirm by granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and entering the attached proposed Order, that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing in this Stipulation, including the stipulated entry of partial decrees for these claims and any affidavits or other evidence or pleading submitted for the approval of the Stipulation, or any

offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to support or oppose any party's claims or objections in the SRBA or in any other adjudication involving claims for the same or similar purposes, including the quantities of water claimed, or in any other manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those seeking approval of the Order Approving Stipulation and Entry of Partial Decrees, for interpretation, enforcement or administration of this Stipulation or the Partial Decrees or for a purpose contemplated by Idaho Rule of Evidence 408.

12. Stipulation and Partial Decrees Binding. This Stipulation shall bind and inure to the benefit of the respective successors of the parties. Upon entry of the Partial Decrees, the Partial Decrees shall be binding on all parties in the SRBA.

13. Mutual Covenants of Authority. The parties represent and acknowledge that each of the undersigned is authorized to execute this Stipulation and Joint Motion on behalf of the party they represent.

14. Non-Severability. The provisions of this Stipulation are not severable. If any provision of this Stipulation is found to be unlawful and of no effect, then the parties hereto shall resume negotiations to revise such unlawful provision.

15. Effective Date. The effective date of this Stipulation shall be September 1, 2003.

**JOINT MOTION FOR ORDER APPROVING STIPULATION
AND ENTRY OF PARTIAL DECREES**

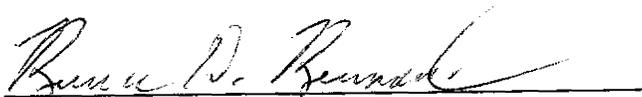
The parties request the SRBA Court to: (1) approve the foregoing Stipulation; (2) approve the attached SF-4 for the Basin 78 Partial Decrees and approve and enter the Partial Decrees for claims numbered 78-12200 through 78-12205 and 79-14054 through 79-14079 all in accordance with paragraph 8 of the Stipulation; (3) retain jurisdiction for the purpose of resolving any disputes concerning implementation and enforcement of the Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, administration of the subordination provisions of the Partial Decrees; and (4) order that, pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, including the stipulated entry of Partial Decrees for these claims and any affidavits or other evidence or pleading submitted for the approval of the Stipulation, or any offers or compromises made in the course of negotiating the Stipulation, shall be construed as admissions against interest or tendered or used as evidence to support or oppose any party's claims or objections in the SRBA or in any other adjudication involving claims for the same or similar purposes, including the quantities of water claimed, or in any other manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those seeking approval of the Order Approving Stipulation and Entry of Partial Decrees, for interpretation, enforcement or administration of the Stipulation or the Partial Decrees or for a purpose contemplated by Rule 408. The order sought by this Joint Motion, which is attached hereto, is fully in accordance with Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

Wherefore, the United States and Objectors respectfully request that this Court grant this Joint Motion in all respects by entering the attached proposed order.

The United States and Objectors request expedited consideration of this Joint Motion.

The parties have executed this Stipulation and Joint Motion on the date following their respective signatures.

FOR THE UNITED STATES:



Date: 8/17/04

BRUCE D. BERNARD
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
999 18th Street, Suite 945
Denver, Colorado 80202
(303) 312-7319

FOR THE STATE OF IDAHO, including THE IDAHO WATER RESOURCES BOARD:

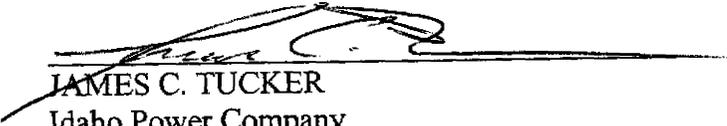


Date: 20/August/2004

LAWRENCE G. WASDEN,
Attorney General
CLIVE J. STRONG,
Deputy Attorney General
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
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FOR IDAHO POWER COMPANY:

Date: 8/17/04



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Certificate of Service

I certify that on August 20, 2004, I caused to be served a true and correct copy of the **Stipulation and Joint Motion for Order Approving Stipulation** for subcase no. 79-13597 to the parties listed below:

Original by hand delivery to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies by hand delivery or United States Mail, postage prepaid to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

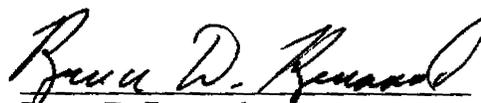
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Bruce D. Bernard

Decrees, the supporting affidavits and the SF-4 motions for the Basin 78 claims and having heard the parties concerning these matters;

THE SRBA DISTRICT COURT NOW FINDS AS FOLLOWS:

The parties have satisfied the requirements of Chapter 14, Title 42, Idaho Code, including Section 42-1411A, the Idaho Rules of Civil Procedure and SRBA Administrative Order 1. The Stipulation is a fair and equitable settlement of all the United States' claims in the SRBA for the portion of the Hells Canyon National Recreation Area within Idaho Department of Water Resources Administrative Basin No. 79. The Stipulation does not adversely affect the interests of persons not party to the Stipulation and good cause has been shown for granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and the SF-4 motions to file late notices of claim for the Basin 78 Partial Decrees.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Partial Decrees for the United States' Hells Canyon National Recreation Area Act federal reserved water rights within Idaho Department of Water Resources Administrative Basin No. 79, i.e., Partial Decrees numbered 79-14054 through 79-14079, are hereby ratified, confirmed and approved. The Court shall retain jurisdiction for the purpose of resolving disputes regarding the interpretation and implementation of the Partial Decrees.

2. The SF-4 motions to file late notices of claim for the Basin 78 Partial Decrees, i.e., Partial Decrees numbered 78-12200 through 78-12205, were granted by the Court's Order dated November 2, 2004. Notice of the Director's Report that includes these late notices of claim shall be provided in the SRBA Docket Sheet. The hearing on entry of those Partial Decrees is hereby set for February 15, 2005.

3. 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 the implementation and enforcement of the Stipulation. The provisions of paragraph 2 shall not affect the rights of any 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.

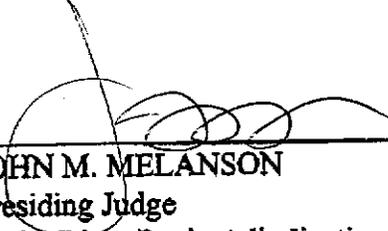
4. Pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, including the stipulated entry of Partial Decrees for these claims and any affidavits or other evidence or pleading submitted or relied upon for approval of the Stipulation, or any offers or compromises made in the course of negotiating the Stipulation, shall be construed as admissions against interest or tendered or used as evidence to support or oppose any party's claims or objections in the SRBA or in any other adjudication involving claims for the same or similar purposes, including the quantities of water claimed, or in any other manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those for interpretation, enforcement or administration of the Stipulation or the Partial Decrees or for a purpose contemplated by Rule 408. This Order is fully in accordance with Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court directed at furthering the strong public policy favoring out-of-court

settlement of disputes over litigation.

6. The water rights adjudicated by the Basin 79 Partial Decrees are in full satisfaction of all the United States' claims in the SRBA for the portion of the Hells Canyon National Recreation Area within Idaho Department of Water Resources Administrative Basin No. 79.

IT IS SO ORDERED.

DATED this 16 day of November, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER APPROVING STIPULATION AND ENTRY OF BASIN 79 PARTIAL DECREES was mailed on November 16, 2004, with sufficient first-class postage to the following:

JOHN K. SIMPSON
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12200 through 78-12205. The United States' entitlement to federal reserved water rights for the Hells Canyon National Recreation Area ("HCNRA") pursuant to the HCNRA Act, was affirmed, however, by the Idaho Supreme Court in *Potlatch v. United States*, 134 Idaho 916, 12 P.3d 1260 (2000). These objectors' challenge to the existence of these rights is, therefore, not well taken.

2. The parties have satisfied the requirements of Chapter 14, Title 42, Idaho Code, including Section 42-1411A, the Idaho Rules of Civil Procedure and SRBA Administrative Order 1 and good cause has been shown for granting the requested entry of the Basin 78 Partial Decrees.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Claims numbered 78-12200 through 78-12205 are hereby consolidated into Consolidated Subcase No. 79-13597.

2. All terms of the Court's Order Approving Stipulation and Entry of Basin 79 Partial Decrees, dated November 16, 2004, are incorporated herein. The Court's approval of the Stipulation applies to the Stipulation as it pertains to these Basin 78 Partial Decrees, including the Court's retained jurisdiction concerning administration of the water rights confirmed by the Basin 78 Partial Decrees.

3. The Partial Decrees for the United States' Hells Canyon National Recreation Area Act federal reserved water rights within Idaho Department of Water Resources Administrative Basin No. 78, i.e., Partial Decrees numbered 78-12200 through 78-12205, are hereby ratified, confirmed and approved.

4. The water rights adjudicated by the Basin 78 Partial Decrees are in full satisfaction of all the United States' claims in the SRBA for the portion of the Hells Canyon

National Recreation Area within Idaho Department of Water Resources Administrative Basin

No. 78.

IT IS SO ORDERED.

DATED this 2nd day of May, 2005.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of May, 2005, I served a true and correct copy of the foregoing **ORDER APPROVING ENTRY OF BASIN 78 PARTIAL DECREES**, by depositing a copy thereof in the U.S. mail, postage prepaid to the following:

All parties indicated on the attached Certificate of Service for Hells Canyon National Recreation Area Act Claims, Consolidated Subcase 79-13597



Deputy Clerk

**WILD & SCENIC RIVERS
AGREEMENT**

UNITED STATES OF AMERICA

STATE OF IDAHO

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Attorneys for the United States of America

Attorneys for the State of Idaho

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: SRBA

)
)
) Consolidated Subcase No. 75-13316
) Wild & Scenic Rivers Act Claims
) (Encompassing Subcases 75-13316, 77-11941,
) 77-13844, 78-11961, 81-10472, 81-10513 and 81-10625)
)

CASE NO. 39576

) Stipulation and Joint Motion for Order
) Approving Stipulation and Entry of Partial
) Decrees
)
)
)

STIPULATION

The United States of America ("United States"), and objectors, the State of Idaho ("State"), and Dewey Mining Company, et al.,^{1/} City of Challis, et al.,^{2/} Big Bend Irrigation

^{1/} Dewey Mining Company, Thunder Mountain Gold, Inc., and Potlatch Corp., all represented by Jeffrey C. Fereday, Esq.

^{2/} City of Challis, City of Pocatello, City of Salmon, Basic American, Inc., and Lamb-Weston, Inc., all represented by Josephine P. Beeman, Esq.

District, et al.,^{3/} Idaho Power Company, A & B Irrigation District, et al.,^{4/} and Thomas R. Stuart III, et al.,^{5/} (the State and these other objectors referred to as “Objectors;” the United States and Objectors sometimes referred to as the “parties”), who constitute all the parties to these consolidated subcases, hereby stipulate and agree, by and through their respective undersigned counsel, as follows:

1. Stipulation to Entry of Partial Decrees: The United States and Objectors stipulate to entry of the partial decrees for the United States’ Wild and Scenic Rivers Act federal reserved water rights claims numbered 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513 and 81-10625, attached hereto and incorporated herein as Attachments 1 through 6 (the “Partial Decrees”), all parties to bear their own costs and fees. The Partial Decrees confirm the United States’ federal reserved water rights pursuant to the Wild and Scenic Rivers Act, as recognized by the Idaho Supreme Court in *Potlatch v. United States*, 134 Idaho 912, 12 P.3d 1256 (2000), and set forth the quantities and terms of those rights. The Partial Decrees quantify these federal reserved water rights based on identified flows, subject to subordinations to certain existing and future rights and uses, and the preclusion of out-of-basin diversions above the ending point of each of the respective federal reserved water rights as identified in the Partial Decrees. The parties request the Snake River Basin Adjudication Court (“SRBA Court” or “Court”) to

^{3/} Big Bend Irrigation District, Boise-Kuna Irrigation District, New York Irrigation District, and Wilder Irrigation District, all represented by Albert P. Barker, Esq.

^{4/} A & B Irrigation District, Burley Irrigation District, Twin Falls Canal Company, North Side Canal Company, Progressive Irrigation District, Enterprise Irrigation District, New Sweden Irrigation District, Snake River Valley Irrigation District, Idaho Irrigation District, Harrison Canal & Irrigation Company, Burgess Canal & Irrigation Company, Peoples Canal & Irrigation Company, Egin Bench Canals, Inc., and North Fremont Canal Systems, Inc., all represented by Jerry R. Rigby, Esq.

^{5/} Thomas R. Stuart III, Gene Bray, Bonnie Schonefeld, Alma Marie Osborn, and Phyllis K. Kochert, all represented by William Eddie, Esq.

approve, by granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and entering the attached proposed Order, the quantification of these Wild and Scenic Rivers federal reserved water rights as agreed to by the parties and set forth in the Partial Decrees. The parties also agree to entry of a final decree incorporating the Partial Decrees.

2. Administration of Water Rights.

a. Enforcement. The State, through the Idaho Department of Water Resources ("IDWR") and local water districts created and supervised by IDWR pursuant to Idaho Code §§ 42-604 et seq., shall distribute water to the federal reserved water rights set forth in this Stipulation and the Partial Decrees and all other hydraulically connected water rights, regardless of subbasin location, above the ending point of the respective federal reserved water rights in accordance with priority dates, quantities and all other elements of the rights as provided in this Stipulation and the Partial Decrees, and applicable law at all times when there is a hydraulic connection between the federal reserved water right and the right to be regulated. While this paragraph does not affect the present administration of existing water rights from tributary sources that are administered separately, all new water rights that are hydraulically connected with the Wild and Scenic Rivers federal reserved water right will be administered as a single source.

b. Creation of Water Districts.

(1) IDWR will establish water districts as necessary to assist IDWR in the administration of water rights. The parties agree that, regardless of whether a water district has been established for an area, IDWR will: A) collect and record diversion data; B) enforce the water rights in priority; and C) curtail unauthorized or excessive diversions as necessary.

(2) Within six months after issuance of the Partial Decrees confirming the Wild and Scenic Rivers federal reserved water rights, the parties will file a joint petition with the SRBA Court, pursuant to Idaho Code § 42-1417, for an order for interim administration of administrative basins 71 and 72 and IDWR will establish a water district for the Upper Salmon River Basin. The Upper Salmon Water District (the "USWD") shall initially consist of administrative basins 71 and 72, those basins for which Director's Reports have been filed for irrigation and other water rights. Within six months of the filing of Director's Reports for administrative basins 73, 74 and 75, the parties will file a joint petition with the SRBA Court, pursuant to Idaho Code § 42-1417, for an order for interim administration of those basins and IDWR will incorporate those basins into the USWD. Existing water districts within the basins will be converted to subdistricts within the USWD as appropriate to facilitate management. Other subdistricts will be formed as deemed necessary to accomplish the purposes of the USWD. Creation of the USWD shall involve full participation by water users in the area in accordance with state law, and the existing water districts will have an important role. The resulting organization will be fully under the supervision of IDWR.

(3) The parties agree that at present, the limited number of water rights above the ending point of the other Wild and Scenic Rivers federal reserved water rights confirmed by the Partial Decrees does not justify the creation of water districts for purposes of administration. If in the future any party believes that creation of a water district above the ending point of any of the other Wild and Scenic Rivers federal reserved water rights is warranted, such party shall be entitled to file a petition with the SRBA Court for an order of interim administration (or, in the event the final SRBA decree has been entered, file a petition with IDWR for administration) of such basin and the other parties to this Stipulation shall not

oppose such petition and IDWR will establish a water district for the basin if IDWR determines that a water district is necessary to properly administer water rights in the basin.

c. Administration of New Water Rights. IDWR will condition each water right permit or license issued after the effective date of this Stipulation for a non-de minimis water right upstream from the ending point of the Wild and Scenic River as set forth in this Stipulation to require that each diversion is equipped with lockable controlling works, a measuring device, and a data logger or other suitable device that regularly monitors and records the rate of diversion. The condition will require that the data logger or other suitable device be configured to accept a removable data card or other suitable memory device that must be submitted by the water user to the IDWR or the watermaster on a quarterly basis, for each quarter when diversion occurs.

d. Prevention of Unauthorized Uses. IDWR and the watermaster will utilize all appropriate techniques, including but not limited to remote-sensing, field observation and inventory, coordination with local water users and citizens, and input from other agencies, to identify unauthorized uses of water. IDWR and/or the watermaster will curtail identified unauthorized uses of water based on the authorities of Chapter 6, Title 42, Idaho Code, and IDWR will pursue appropriate civil enforcement action as provided in Idaho Code §§ 42-351 and 42-1701B.

e. Administration of Existing Water Rights. IDWR and the watermaster shall conduct a systematic inventory of diversions, giving priority to those diversions that have the greatest potential influence on other water rights. IDWR will evaluate the staffing requirement for operation of the water district and will identify needs for subdistricts and deputy watermasters as required. IDWR and the watermaster will specifically identify and curtail

unauthorized uses. IDWR and the watermaster will monitor all non-de minimis diversions through site visits and measurements by means of current meter or other appropriate methods to ensure that when water rights are found to be exceeded, such exceedance will be curtailed and that other unauthorized uses are curtailed, based on the authorities of Chapter 6, Title 42, Idaho Code. IDWR will collect and report diversion data on a quarterly basis; provided, however, 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. 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 §§ 42-351 and 42-1701B.

f. Availability of Water Use Information. IDWR shall provide the United States, at its request, any water measurement reports prepared by or for IDWR and any other information relating to the implementation of this Stipulation, including the basis for all information reported in the subordination database described in paragraph 3.e. below.

g. Coordination. In order to provide for effective water management by IDWR and the watermaster, and to ensure effective communication between interested parties, periodic coordination meetings shall be held between IDWR, the watermaster, and water users, including representatives of private water users and the federal government. The purposes of such meetings include:

- (1) Agreeing upon management goals;
- (2) Identifying and prioritizing stream reaches or other locales needing improved management to focus the use and attention of available resources;

- (3) Identifying sources of funding for regulation, equipment, and facilities;
- (4) Identifying the need for creation of additional subdistricts with deputy watermasters;
- (5) Sharing data and other information and assessing progress in meeting management needs.

Coordination meetings will involve members of the regulated public (advisory committee members) to assure continuing acceptance of the program. The meetings will be held periodically for the first two years of operation to provide for the development of consensus of appropriate procedures, and then annually or more frequently as driven by need.

h. United States' Measuring Devices. The stream gages identified in the Partial Decrees shall be utilized in the administration of the water rights confirmed by those Partial Decrees. The United States will install, maintain and provide Objectors access to such gages as necessary for administration of the water rights confirmed by the Partial Decrees. IDWR agrees to cooperate with the United States in the installation and maintenance of such gages, and the State agrees to provide access to state-owned lands for the purpose of installing and maintaining said gages.

i. Remedies. In the event the State fails to administer water rights in accordance with the terms of this Stipulation, the Partial Decrees and applicable law, any party to this Stipulation, upon a satisfactory showing to the SRBA Court, or any successor state court with jurisdiction to enforce the final decree issued by the SRBA Court, of such failure to administer, shall be entitled to an order under the Court's continuing jurisdiction, as described in paragraph 5, compelling the State to properly administer the water rights.

3. Administration of Subordination Provisions of Partial Decrees. The Wild and Scenic Rivers federal reserved water rights confirmed by the Partial Decrees are subordinated to certain water rights and uses with points of diversion or impoundment and places of beneficial use within the river basin upstream from the ending point of each of the federal reserved water rights. Administration of the subordination provisions shall be as follows:

a. Accounting of Diversion and Acreage Amounts Under Future Use Subordinations. IDWR will deduct from the subordination amounts provided for in paragraph 10.b.(6) of the Partial Decree for the Main Salmon River and paragraph 10.b.(5) of the other Partial Decrees the amount of the diversion rate, and if for irrigation, the acreage, of any decree, permit or license for a water right that IDWR determines will enjoy the benefit of those subordination provisions. If IDWR licenses any right for less than the amount permitted, the amount of the difference will be credited back to the subordination amount from which the permitted diversion was previously deducted.

b. Municipal Provider Reporting Requirement and Allocation to Future Use Subordination. IDWR will condition every new permit or license issued for a municipal water right with a priority date after the effective date of the Stipulation and enjoying the benefit of the subordination provided by paragraph 10.b.(5) of the Partial Decree for the Main Salmon River with the reporting condition described below. The reporting condition will require the right holder to report to IDWR when diversions commence under the permit or license and from that time forward to report to IDWR by January 31 of each year all new municipal connections installed in the prior calendar year of a size greater than 4 inches in diameter. The report will include the size, capacity, and location of each connection required to be reported. IDWR will, by March 1 of the year the report is received, post the reported information to the subordination

accounting database provided for in paragraph 3.e. and reduce the remaining subordination amount provided for in paragraph 10.b.(6) of the Partial Decree for the Main Salmon River by the capacity of any connection(s) greater than 2 cfs capacity, other than capacity for fire protection.

c. Diversion Adjustment for Forfeiture or Abandonment.

(1) If a water right enjoying the benefit of subordination provision 10.b.(6) of the Partial Decree for the Main Salmon River or provision 10.b.(5) of the remainder of the Partial Decrees (other than water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights as defined in those paragraphs of the Partial Decrees), is lapsed, forfeited, or abandoned, the diversion rate and, if for irrigation, the acreage will be added to the applicable subordination amount. The amount of diversion rate and, if for irrigation, acreage to be added to the applicable subordination will be the same quantity of subordination assigned to the water right at the time the water right was lost.

(2) The State may petition the SRBA Court, or any successor state court with jurisdiction to enforce the final decree issued by the SRBA Court, for an increase in the applicable subordination amount based upon the forfeiture or abandonment of water rights senior to the rights confirmed by the Partial Decrees that have points of diversion or impoundments and places of use within the basin and upstream from the Wild and Scenic River ending point, or subordinated to under paragraphs 10.b.(1) & (2) of the Partial Decrees, but, in either case, not for domestic uses (that if junior to the federal reserved water right would be subordinated to under paragraph 10.b.(3) of the Partial Decrees), stockwater uses (that if junior to the federal reserved water right would be subordinated to under paragraph 10.b.(4) of the Partial Decrees), and municipal uses (that if junior to the federal reserved water right would be

subordinated to under paragraph 10.b.(5) of the Partial Decree for the Main Salmon River). Any such petition shall be served on the U.S.D.A. Forest Service, 161 East Mallard Drive, Suite A, Boise, ID, 83706 or such other address that the Forest Service has provided IDWR, and the United States shall have the right to participate in all proceedings thereon for the purposes of monitoring, limiting or opposing the petition. The forfeiture or abandonment of water rights will be eligible to increase the subordination amounts if the following conditions are met:

(A) the forfeiture or abandonment is based on a period of non-use entirely after the effective date of this Stipulation;

(B) the forfeiture or abandonment results in an increased flow to the affected Wild and Scenic River; and

(C) the forfeited or abandoned water right is decreed by the SRBA Court or licensed by IDWR (not required to be claimed in the SRBA). The amount of any increase in subordination will be determined by the SRBA Court, or any successor state court with jurisdiction to enforce the final decree issued by the SRBA Court. The amount added to the future use subordination will be limited to use in the sub-basin in which it was historically used.

d. Water Right Database. IDWR will maintain a publicly available database of water right records on file with IDWR that are above the ending point of each Wild and Scenic federal reserved water right. The database will identify the statutory elements for each active water right record.

e. Subordination Accounting Database. In the normal course of application and claim processing, IDWR will maintain publicly available information for purposes of implementation of the subordinations provided under the Partial Decrees. The data will:

(1) identify all accepted applications for permit and all water right claims with points of diversion located upstream from the ending points of the water rights confirmed by the Partial Decrees;

(2) identify applications for permit that IDWR has determined will enjoy the benefit of any of the subordination provisions of the Partial Decrees, including the information described in paragraph 3.f.(1) below;

(3) separately identify those water rights decrees, permits and licenses that come within the applicable subordination provision;

(4) with respect to water rights decrees, permits and licenses that come within the future use subordination (paragraph 10.b.(6) of the Partial Decree for the Main Salmon River, paragraph 10.b.(5) of the other Partial Decrees), identify the diversion rate, and for irrigation rights, the number of irrigated acres, decreed, permitted or licensed, including any reductions in permitted amounts as licensed, to be credited to the applicable future use subordination;

(5) with respect to forfeited, abandoned or lapsed water rights as identified in paragraph 3.c.(1), identify those rights and the diversion and, if for irrigation, the acreage that IDWR has credited the applicable future use subordination as described in paragraph 3.c.(1) above;

(6) identify all accepted applications for permit and all water right claims that IDWR has determined will, if approved, constitute water rights of the United States, instream flow water rights, nonconsumptive water rights or replacement water rights within the meaning of those terms as used in paragraph 10.b.(6)(C) of the Partial Decree for the Main Salmon River, paragraph 10.b.(5)(C) of the Partial Decree for the Middle Fork Salmon River,

and paragraph 10.b.(5)(B) of the other Partial Decrees and that would otherwise be deducted from the applicable subordination amounts for future rights, and identify all water rights decrees, permits and licenses for water rights that IDWR has determined constitute water rights of the United States, instream flow water rights, nonconsumptive water rights or replacement water rights as described above;

(7) with respect to rights that come within the municipal right subordination provision (paragraph 10.b.(5) of the Partial Decree for the Main Salmon River), identify when diversions commence under any such permit or license, annually identify water diversion data, including the number of connections that exceed the 2 cfs threshold as reported to IDWR by the municipal right holder, and the amount subtracted from the future use subordination (paragraph 10.b.(6) of the Partial Decree for the Main Salmon River); and

(8) set forth a running total of the amounts of future use subordination remaining available for appropriation under paragraph 10.b.(6) of the Partial Decree for the Main Salmon River and paragraph 10.b.(5) of the other Partial Decrees. IDWR will make available to the United States or any other party upon request any and all documentation concerning the above referenced matters. "Publicly available" as used in this Stipulation means remote computer access or other similar future technology and the ability to request, on an as needed basis, composites of all water right records on contemporary media in a form that can be manipulated with contemporary technology (software and hardware). IDWR will review any comments or suggestions made by any of the parties concerning the adequacy of this records system.

amount of the adjustment will be noted in the posting of the license and reflected in an adjustment of the remaining diversion rate and acreage available under the subordination.

(4) Upon entry of a partial decree for a claimed water right that IDWR has determined will enjoy the benefit of any of the subordination provisions of the Partial Decrees, IDWR will post the partial decree to the subordination database along with the identity of the subordination provision that IDWR has determined is applicable to the partial decrees and, with respect to the subordination provision provided in paragraph 10.b.(6) of the Partial Decree for the Main Salmon River and paragraph 10.b.(5) of the other Partial Decree, the diversion rate and, if for irrigation, the acreage, allocated to the partial decree that IDWR has determined will enjoy the benefit of the identified subordination provision, as well as the remaining balance of available diversion rate and acreage for that subordination provision.

(5) Upon determination that an application for permit or water right claim will, if approved, constitute a water right of the United States, an instream flow water right, a nonconsumptive water right or a replacement water right within the meaning of those terms as used in paragraph 10.b.(6)(C) of the Partial Decree for the Main Salmon River, paragraph 10.b.(5)(C) of the Partial Decree for the Middle Fork Salmon River, and paragraph 10.b.(5)(B) of the other Partial Decrees that would otherwise be deducted from the applicable subordination amounts for future rights, and upon issuance of a water rights decree, permit or license for a water right that IDWR has determined constitutes a water right of the United States, an instream flow water right, nonconsumptive water right or replacement water right as described above, IDWR will post to the subordination accounting database the type of water right IDWR has determined the right to be, the diversion rate and, if for irrigation, the acreage, applied for, claimed or allocated to the water rights decree, permit or license that IDWR has

determined constitutes a water right of the United States, an instream flow water right, nonconsumptive water right or replacement water right as described above;

(6) Any party may contact IDWR at any time to request additional information concerning the matters described above or to inform IDWR of concerns raised by IDWR's proposed determination with respect to any permit, license, partial decree, abandonment, forfeiture, or lapsing of a water right or any municipal connection in excess of 2 cfs. Any party may request reconsideration or explanation by IDWR of implementation or proposed implementation of any subordination provision at any time and the parties agree to make a good faith effort to resolve questions and reach agreement regarding implementation of the subordination provisions.

4. Resolution of Disputes Concerning Implementation of Stipulation. The parties and IDWR agree to make good faith efforts to resolve any disputes which arise concerning IDWR's implementation of this Stipulation. IDWR will provide any party requested information concerning the subject matter of any such disputes. In the event the parties are unable to resolve any such disputes, any party may seek review of IDWR's implementation and enforcement of this Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, administration of the subordination provisions of the Partial Decrees, in the SRBA Court or any successor state court with jurisdiction to enforce the final decree issued by the SRBA Court. Review shall be de novo and any disputed factual issues shall be decided based upon a preponderance of the evidence. Judicial review must be brought within six months of the challenged action, or within six months of the notification of the challenged action (if notice is required under the terms of the Stipulation), whichever is later.

5. Continuing Jurisdiction. The parties request the SRBA Court, by granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and entering the attached proposed Order, to retain jurisdiction for the purpose of resolving disputes regarding the implementation and enforcement of this Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, administration of the subordination provisions of the Partial Decrees.

6. Parties' Rights to Object to Claims and Protest Permit Applications.

a. Adjudication Claims. This Stipulation does not affect the right of any party to object to any other claims in the SRBA (i.e., claims other than the United States' Wild and Scenic Rivers Act claims which are the subject of this Stipulation) or any claim in any other adjudication. The United States, however, may not assert in any objection that the claim (if subordinated to by the applicable Partial Decree) should be denied or conditioned to protect the flow of any Wild and Scenic River subject to this Stipulation.

b. Permit Applications. This Stipulation does not affect the right of any party to protest any application for permit to appropriate water filed with IDWR. The United States, however, may not assert in any protest that the application for permit (if subordinated to by the applicable Partial Decree) should be denied or conditioned (including on public interest grounds) to protect the flow of any of the Wild and Scenic Rivers subject to this Stipulation.

7. Request for Approval of the Stipulation and Entry of Partial Decrees by the SRBA Court. The parties agree to submit this Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees to the SRBA Court in full satisfaction of Claim Nos. 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513, and 81-10625. The parties agree to jointly provide notice of the Stipulation and Motion through the SRBA Docket Sheet and by

personal notice to Objectors and to jointly present affidavits and such other evidence as may be required by the Court for the approval of the Stipulation and Partial Decrees.

8. Defense of Stipulation. The parties agree to jointly support and defend the Joint Motion for Order Approving the Stipulation and for Entry of Partial Decrees against any and all objections or other challenges that may arise in any phase of the SRBA, including any appeals. If the SRBA Court fails to approve the Stipulation and to enter the Partial Decrees exactly as set forth herein, the Stipulation is voidable by any party, provided that any party electing to void the Stipulation shall notify the other parties and the Court in writing of that election within 30 days of the order of the Court not approving the Stipulation and/or Partial Decrees as set forth herein. Failure to provide such notification in the manner provided shall result in forfeiture of such right. If the Stipulation is voided, all parties shall retain all existing claims and objections as though no Stipulation ever existed.

9. Stipulation Does Not Affect Statutory or Regulatory Authority. The parties agree that nothing in this Stipulation or the Partial Decrees shall be construed or interpreted:

a. to establish any standard to be used for the quantification of federal reserved water rights; or

b. to limit or affect the authority of the United States or the State provided by statute or regulation.

10. Stipulation Not to be Used Against Parties. The United States and Objectors agree and request the SRBA Court to confirm by granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and entering the attached proposed Order, that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing in

this Stipulation, including the stipulated entry of partial decrees for these claims and any affidavits or other evidence or pleading submitted for the approval of the Stipulation, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to support or oppose any party's claims or objections in the SRBA or in any other adjudication involving claims for the same or similar purposes, including the quantities of water claimed, or in any other manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those seeking approval of the Order Approving Stipulation and Entry of Partial Decrees, for interpretation, enforcement or administration of this Stipulation or the Partial Decrees or for a purpose contemplated by Idaho Rule of Evidence 408.

11. Stipulation and Partial Decrees Binding. This Stipulation shall bind and inure to the benefit of the respective successors of the parties. Upon entry of the Partial Decrees, the Partial Decrees shall be binding on all parties in the SRBA.

12. Mutual Covenants of Authority. The parties represent and acknowledge that each of the undersigned is authorized to execute this Stipulation and Joint Motion on behalf of the party they represent.

13. Non-Severability. The provisions of this Stipulation are not severable. If any provision of this Stipulation is found to be unlawful and of no effect, then the parties hereto shall resume negotiations to revise such unlawful provision.

14. Effective Date: The effective date of this Stipulation shall be September 1, 2003.

**JOINT MOTION FOR ORDER APPROVING STIPULATION
AND ENTRY OF PARTIAL DECREES**

The parties request the SRBA Court to: (1) approve the foregoing Stipulation; (2) approve and enter the Partial Decrees for claims numbered 75-13316, 77-11941, 77-13844, 78-

11961, 81-10472, 81-10513 and 81-10625; (3) retain jurisdiction for the purpose of resolving any disputes concerning implementation and enforcement of the Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, administration of the subordination provisions of the Partial Decrees; and (4) order that, pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, including the stipulated entry of Partial Decrees for these claims and any affidavits or other evidence or pleading submitted for the approval of the Stipulation, or any offers or compromises made in the course of negotiating the Stipulation, shall be construed as admissions against interest or tendered or used as evidence to support or oppose any party's claims or objections in the SRBA or in any other adjudication involving claims for the same or similar purposes, including the quantities of water claimed, or in any other manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those seeking approval of the Order Approving Stipulation and Entry of Partial Decrees, for interpretation, enforcement or administration of the Stipulation or the Partial Decrees or for a purpose contemplated by Rule 408. The order sought by this Joint Motion, which is attached hereto, is fully in accordance with Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

Wherefore, the United States and Objectors respectfully request that this Court grant this Joint Motion in all respects by entering the attached proposed order.

The United States and Objectors request expedited consideration of this Joint Motion.

The parties have executed this Stipulation and Joint Motion on the date following their respective signatures.

FOR THE UNITED STATES:



Date:

8/17/04

BRUCE D. BERNARD
DAVID W. GEHLERT
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
999 18th Street, Suite 945
Denver, Colorado 80202
(303) 312-7319

DAVID L. NEGRI
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
550 W. Fort St. MSC033
Boise, ID 83724
(208) 331-5943

FOR THE STATE OF IDAHO, including THE IDAHO WATER RESOURCES BOARD:



Date:

8/ June / 2004

LAWRENCE G. WASDEN,

Attorney General

CLIVE J. STRONG,

Deputy Attorney General

Chief, Natural Resources Division

Office of the Attorney General

State of Idaho

P.O. Box 44449

Boise, ID 83711-4449

(208) 334-4126

FOR DEWEY MINING COMPANY, THUNDER MOUNTAIN GOLD, INC., and POTLATCH CORPORATION:

Jeffrey C. Fereday

Date: 6/11/04

JEFFREY C. FEREDAY
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
(208) 388-1200

FOR CITY OF CHALLIS, CITY OF POCA TELLO, CITY OF SALMON, LAMB WESTON,
INC., and BASIC AMERICAN, INC.:

Josephine P. Beeman

Date:

July 12, 2004

JOSEPHINE P. BEEMAN

Beeman & Associates, P.C.

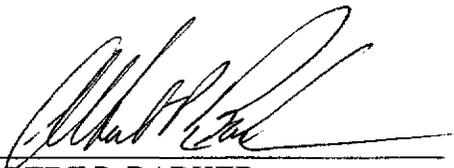
~~P.O. Box 1427~~ 409 W. Jefferson

Boise, ID 83701-1427

83702

(208) 331-0950

FOR BIG BEND IRRIGATION DISTRICT, BOISE-KUNA IRRIGATION DISTRICT, NEW YORK IRRIGATION DISTRICT, and WILDER IRRIGATION DISTRICT:



Date:



ALBERT P. BARKER
Barker, Rosholt & Simpson LLP
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700

FOR IDAHO POWER COMPANY:



JAMES C. TUCKER
Idaho Power Company
P.O. Box 70
Boise, ID 83707
(208) 388-2112

Date: 7/22/04

MICHAEL MIRANDE
Miller Bateman LLP
1426 Alaskan Way, Suite 301
Seattle, WA 98101
(206) 903-0300

FOR A & B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, TWIN FALLS CANAL COMPANY, NORTH SIDE CANAL COMPANY, PROGRESSIVE IRRIGATION DISTRICT, ENTERPRISE IRRIGATION DISTRICT, NEW SWEDEN IRRIGATION DISTRICT, SNAKE RIVER VALLEY IRRIGATION DISTRICT, IDAHO IRRIGATION DISTRICT, HARRISON CANAL & IRRIGATION COMPANY, BURGESS CANAL & IRRIGATION COMPANY, PEOPLES CANAL & IRRIGATION COMPANY, EGIN BENCH CANALS, INC., and NORTH FREMONT CANAL SYSTEMS, INC.:


JERRY R. RIGBY
Rigby, Thatcher, Andrus, Rigby
Kam & Moeller, Chtd.
P.O. Box 250
Rexburg, Idaho 83440-0250
(208) 356-3633

Date: 6-11-04

FOR THOMAS R. STUART III, GENE BRAY, BONNIE SCHONEFELD, ALMA MARIE
OSBORN, and PHYLLIS K. KOCHERT:

A handwritten signature in black ink, consisting of the letters 'W' and 'E' followed by a long horizontal flourish.

Date: July 16, 2004

WILLIAM EDDIE, Esq.
Advocates for the West
PO Box 1612
Boise, ID 83701

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2004, I served a true and correct copy of the foregoing **STIPULATION AND JOINT MOTION FOR ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES**, by depositing a copy thereof in the U.S. mail, postage prepaid, to the following:

All parties indicated on the SRBA Court's Certificate of Mailing for Consolidated Subcase 75-13316 Wild and Scenic Rivers Act Claims.

Renee D. Kennard

the subordination provided in this right), the United States is entitled to all flows, up to 28,400 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Salmon River basin upstream from the ending point of the Salmon Wild and Scenic River at Long Tom Bar and excluding the Middle Fork Salmon River basin, when the stream flow at the Shoup gage exceeds the flow amount in Section 3.a. and is less than 13,600 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right); provided, however, that the flow amounts identified in section 3.a. are maintained between the Shoup gage and the ending point of the Salmon Wild and Scenic River at Long Tom Bar.

d. The quantification site for the flows identified above is the USGS Salmon River near Shoup gage, number 13307000, located in NE1/4SW1/4, Sec. 14, T23N, R17E, Boise Meridian; Latitude N 45° 19' 20.8", Longitude W 114° 26' 21.2".

e. Water rights within the watershed of the Salmon River Basin upstream from the ending point of the Salmon Wild and Scenic River at Long Tom Bar will be administered to ensure the satisfaction of this right throughout the Wild and Scenic reach. When the stream flow at the Shoup gage is less than the flow amounts in section 3.a. or greater than 13,600 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right), water shall not be diverted at any location in the Salmon River basin above such ending point, including locations downstream from the Shoup gage (but excluding the Middle Fork Salmon River basin that is subject, instead, to the Middle Fork Salmon River Partial Decree No. 77-13844), other than under water rights enjoying the subordinations provided in section 10.b. "Futile call" may not be asserted as a basis for allowing any such downstream diversions so long as there is a hydraulic connection between the Salmon River and the right to be regulated.

f. This water right precludes any diversion of water out of the watershed of the Salmon River Basin upstream from the ending point of the Salmon Wild and Scenic River at Long Tom Bar, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

July 23, 1980.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Mouth of the North Fork of the Salmon River -- SW1/4SW1/4, Sec. 16, T24N, R21E, Boise Meridian; Latitude N 45° 24' 17.6", Longitude W 113° 59' 36.7".

Ending point: Long Tom Bar – SE1/4SE1/4, Sec. 31, T25N, R5E, Boise Meridian; Latitude N 45° 27' 35.9", Longitude W 115° 52' 48.8".

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the Central Idaho Wilderness Act of 1980, Pub.L. 96-312, 94 Stat. 948, July 23, 1980 (codified as amended at 16 U.S.C. §§ 1132, 1274, 1281).

7. Period of use:

01-01 to 12-31.

8. Place of use:

This instream flow water right is used throughout the designated Salmon Wild and Scenic River from the beginning point to the ending point as identified above.

9. Annual volume of consumptive use:

This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the Central Idaho Wilderness Act of 1980, Pub.L.

96-312, 94 Stat. 948, July 23, 1980 (codified as amended at 16 U.S.C. §§ 1132, 1274, 1281).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Salmon River Basin upstream from the ending point, as identified in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or

business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) All water rights having a priority date later than the effective date of the Stipulation and held by a municipality incorporated under Idaho Code, §§ 50-101 and -102, or an authorized franchise service provider for an incorporated municipality for use within the municipality's or provider's service area; provided, however, that any individual municipal hookup that has a manufacturer's rated maximum flow capacity of equal to or greater than 2 cfs of water on an instantaneous basis, other than capacity for fire protection, will count against the finite future subordination limit in paragraph (6) below. The phrase "municipal use" shall be defined as set forth at Idaho Code § 42-202B(5) and "service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes within the municipality's corporate limits or other recognized boundaries, including changes therein after a water right is developed. The service area for a municipality may also include areas outside its

corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for such outside areas share a common water distribution system with lands located within the corporate limits.

(6) (A) Water rights other than those described in paragraphs (3) through (5) above claimed or applied for after the effective date of the Stipulation:

(i) with a total combined diversion of 150 cfs (including not more than 5,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre), when the mean daily discharge at the Shoup gage is <1,280 cfs. The specific acres to be irrigated each year will be identified to the IDWR by March 1 of each year, i.e., if a portion of the acreage permitted within this 150 cfs is to be idled for a year or more, an equal number of acres permitted for irrigation within the 225 cfs in subparagraph (ii) below can be substituted to take advantage of the subordination when the river is less than 1,280 cfs for the period of years the original acres are idled.

(ii) an additional diversion of 225 cfs (including up to an additional 10,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre) when the mean daily discharge at the Shoup gage is \geq 1,280 cfs.

(iii) These subordinated amounts do not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) The subordinated amounts identified in subparagraph (A) above apply to all diversions in the Salmon River basin above the ending point of this federal reserved water right, including diversions downstream from the Shoup gage, but excluding diversions in the Middle Fork Salmon River basin.

(C) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

rights enjoying the subordination provided in this right), the United States is entitled to all flows, up to 40,600 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Middle Fork Salmon River basin when the stream flow at the Middle Fork Salmon gage exceeds the flow amount in Section 3.a. and is less than 14,400 cfs.

d. The quantification site for the flows identified above is the USGS Middle Fork Salmon River measurement gage at the river's mouth near Shoup, gage number 13310199, located in SW1/4NE1/4, Sec. 33, T23N, R16E, Boise Meridian; Latitude N 45° 17' 38.0", Longitude W 114° 35' 43.0".

e. This water right precludes any diversion of water out of the watershed of the Middle Fork Salmon River Basin upstream from the ending point of the Middle Fork Salmon Wild and Scenic River at its confluence with the Salmon River, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

October 2, 1968.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Origin of the Middle Fork Salmon River – NW1/4NW1/4, Sec. 23, T13N, R10E, Boise Meridian; Latitude N 44° 26' 57.0", Longitude W 115° 13' 47.9".

Ending point: Confluence with Salmon River – NE1/4NE1/4, Sec. 33, T23N, R16E, Boise Meridian; Latitude N 45° 17' 50.1", Longitude W 114° 35' 32.8".

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

7. Period of use:

01-01 to 12-31.

8. Place of use:

This instream flow water right is used throughout the designated Middle Fork Salmon Wild and Scenic River from the beginning point to the ending point as identified above.

9. Annual volume of consumptive use:

This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the “Stipulation”), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Middle Fork Salmon River Basin upstream from the ending point, as identified in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up

to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 60 cfs, provided that this amount shall include rights for irrigation of no more than 2,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24-hour water supply for any beneficial use.

(B) In addition to the 60 cfs of subordination specified in subparagraph (A), above, a combined total of 5 cfs of diversions within (i) the east side of Monumental Creek basin upstream from and including the Mule Creek basin, to and including the Coon Creek basin; (ii) the west side of Marble Creek basin upstream from and including the Cornish Creek basin to and including the Sunnyside Creek basin; all as described on the map attached as Exhibit A, for any commercial or industrial uses, including storage of any portion of such 5 cfs for commercial or industrial use, provided that the total cumulative storage reservoir capacity established under the subordination described in this subparagraph (B) shall not be greater than 100 acre-feet.

(C) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original

or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

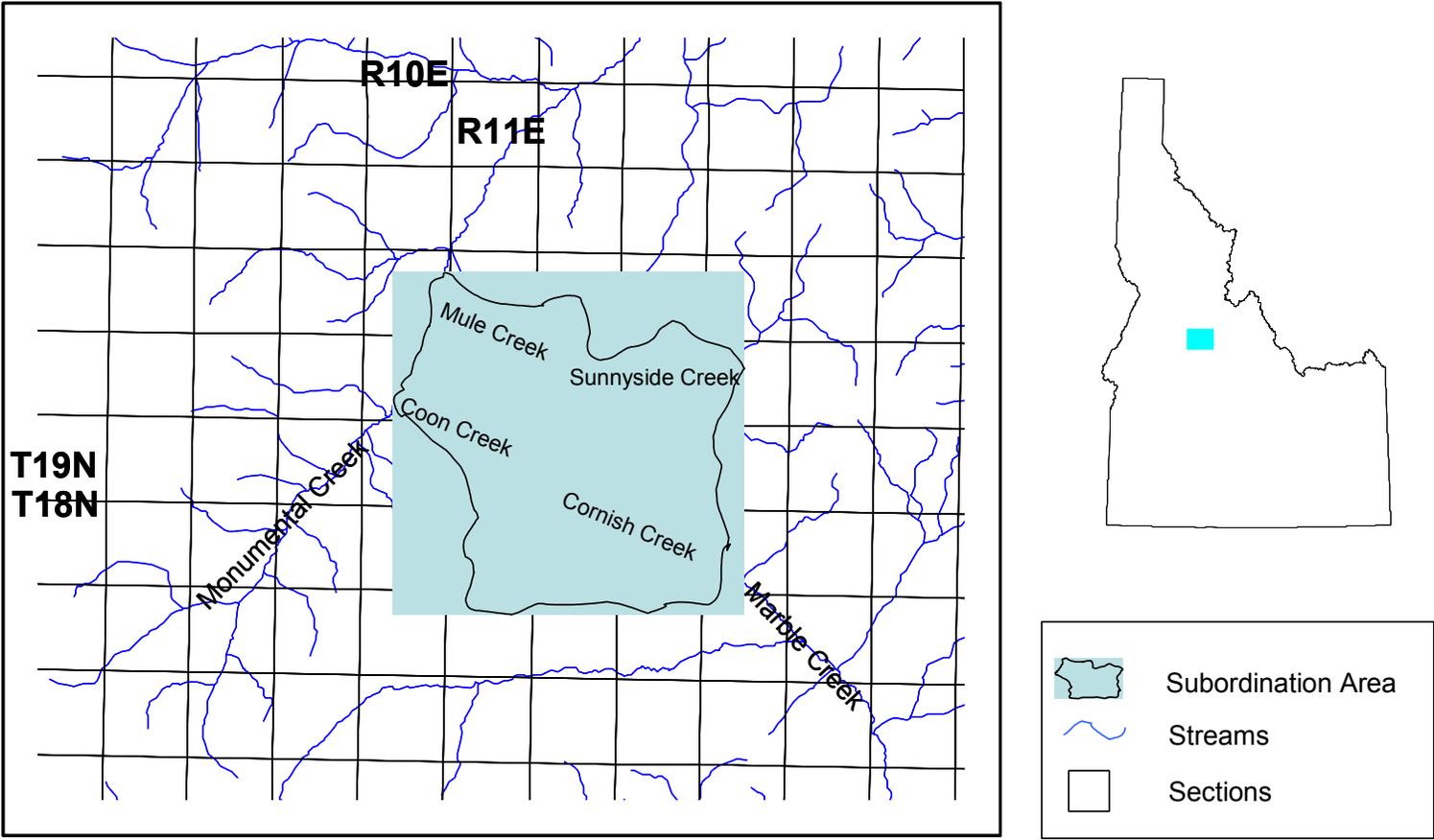
d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

Exhibit A
Area Pertaining to Subordinations Under Element
10.b.(5).B of Middle Fork Salmon Partial Decree
77-13844



ATTACHMENT 3

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

IN RE SRBA)
)
CASE NO. 39576)
)
_____)

**PARTIAL DECREE FOR
Federal Reserved Water Rights 78-11961
Rapid Wild and Scenic River (including West
Fork)**

- 1. Name and address of owner:** UNITED STATES OF AMERICA, on behalf of the
U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724
- 2. Source of water:** Rapid River and West Fork Rapid River
- 3. Quantity of right:** a. When the stream flow at the Rapid River quantification
site as defined in Section 3.d. below (“Rapid River gage”) is less than 625 cfs, the United States is entitled to the following flows:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	73	July 1-15	281
January 16-31	73	July 16-31	175
February 1-15	66	August 1-15	160
February 16-28(29)	63	August 16-31	136
March 1-15	75	September 1-15	124
March 16-31	99	September 16-30	118
April 1-15	109	October 1-15	108
April 16-30	160	October 16-31	97
May 1-15	249	November 1-15	87
May 16-31	403	November 16-30	88
June 1-15	524	December 1-15	73
June 16-30	432	December 16-31	78

- b. When the stream flow at the Rapid River gage is greater than or equal to 625 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right), the United States is entitled to all flows, up to 2,160 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Rapid River basin upstream from the ending point of the Rapid Wild and Scenic River at the National Forest Boundary when the stream flow at the Rapid River gage exceeds the flow amount in Section 3.a. and is less than 625 cfs.

d. The quantification site for the flows identified above is the USDA Forest Service gage located in NE1/4NE1/4, Sec. 12, T23N, R1W, Boise Meridian; Latitude N 45° 21' 7.1", Longitude W 116° 23' 49.5".

e. This water right precludes any diversion of water out of the watershed of the Rapid Wild River Basin upstream from the ending point of the Rapid Wild and Scenic River at the National Forest boundary as described below, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

December 31, 1975.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Main Stem Rapid River:

Beginning point: Headwaters of the main stem Rapid River -- NE1/4SW1/4, Sec. 31, T21N, R1W, Boise Meridian; Latitude N 45° 06' 49.0", Longitude W 116° 30' 23.2".

Ending point: National Forest boundary – NE1/4NE1/4, Sec. 12, T23N, R1W, Boise Meridian; Latitude N 45° 21' 14.0", Longitude W 116° 23' 31.8".

West Fork Rapid River:

Beginning point: Wilderness boundary – NW1/4SW1/4, Sec. 1, T22N, R2W, Boise Meridian; Latitude N 45° 16' 19.1", Longitude W 116° 32' 1.4".

Ending point: Confluence with the main stem Rapid River – SW1/4NE1/4, Sec. 26, T23N, R1W, Boise Meridian; Latitude N 45° 18' 25.0", Longitude W 116° 25' 8.4".

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified as amended at 16 U.S.C. §§ 460gg-469gg-13).

7. Period of use:

01-01 to 12-31.

8. Place of use:

This instream flow water right is used throughout the designated Rapid Wild and Scenic River (including West Fork) from the beginning points to the ending points as identified above.

9. Annual volume of consumptive use:

This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified as amended at 16 U.S.C. §§ 460gg-469gg-13).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Rapid River Basin upstream from the ending point, as identified in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand

(13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 10 cfs (including not more than 300 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original

or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

ATTACHMENT 4

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

IN RE SRBA)
)
CASE NO. 39576)
)
_____)

**PARTIAL DECREE FOR
Federal Reserved Water Right 81-10472
Selway Wild and Scenic River**

- 1. Name and address of owner:** UNITED STATES OF AMERICA, on behalf of the U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724
- 2. Source of water:** Selway River
- 3. Quantity of right:** a. When the stream flow at the Selway River quantification site as defined in Section 3.d. below (“Selway gage”) is less than 23,700 cfs, the United States is entitled to the following flow:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	1670	July 1-15	5840
January 16-31	1670	July 16-31	2490
February 1-15	1670	August 1-15	1350
February 16-28(29)	1670	August 16-31	1000
March 1-15	1670	September 1-15	852
March 16-31	2220	September 16-30	960
April 1-15	5840	October 1-15	1080
April 16-30	9470	October 16-31	1310
May 1-15	13300	November 1-15	1660
May 16-31	19400	November 16-30	1740
June 1-15	19400	December 1-15	1670
June 16-30	13300	December 16-31	1670

b. When the stream flow at the Selway gage is greater than or equal to 23,700 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right), the United States is entitled to all flows, up to 51,400 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Selway River basin when the stream flow at the Selway gage exceeds the flow amount in Section 3.a. and is less than 23,700 cfs.

d. The quantification site for the flows identified above is the USGS Selway River near Lowell gage, number 13336500, located in SE1/4NE1/4, Sec. 25, T32N, R7E, Boise Meridian; Latitude N 46° 05' 11.6", Longitude W 115° 30' 46.3".

e. This water right precludes any diversion of water out of the watershed of the Selway River Basin upstream from the ending point of the Selway Wild and Scenic River at its confluence with the Lochsa River at Lowell, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date: October 2, 1968.

5. Point of diversion: There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Origin of the Selway River -- SW1/4NE1/4, Sec. 21, T25N, R14E, Boise Meridian; Latitude N 45° 29' 45.8", Longitude W 114° 44' 34.8".

Ending point: Confluence with the Lochsa River at Lowell -- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian; Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".

6. Purpose of use: To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

7. Period of use: 01-01 to 12-31.

8. Place of use: This instream flow water right is used throughout the designated Selway Wild and Scenic River from the beginning point to the ending point as identified above.

9. Annual volume of consumptive use:

This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the “Stipulation”), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Selway River Basin upstream from the ending point, as described in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this

domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre and no storage other than incidental storage). This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of

the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

c. This water right does not prohibit the appropriation, diversion and use of water within the Lochsa River basin when the stream flow at the Lochsa gage exceeds the flow amount in Section 3.a. and is less than 18,600 cfs.

d. The quantification site for the flows identified above is the USGS Lochsa River near Lowell gage, number 13337000, located in SW1/4SE1/4, Sec. 33, T33N, R7E, Boise Meridian; Latitude N 46° 09' 2.1", Longitude W 115° 35' 10.6".

e. This water right precludes any diversion of water out of the watershed of the Lochsa River Basin, upstream from the ending point of the Lochsa Wild and Scenic River at its confluence with the Selway River at Lowell, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date: October 2, 1968.

5. Point of diversion: There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Powell Ranger Station (USDA Forest Service) -- SW1/4NW1/4, Sec. 33, T37N, R14E, Boise Meridian; Latitude N 46° 30' 33.1", Longitude W 114° 42' 43.1".

Ending point: Confluence with the Selway River at Lowell -- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian; Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".

6. Purpose of use: To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

7. Period of use: 01-01 to 12-31.

8. Place of use: This instream flow water right is used throughout the designated Lochsa Wild and Scenic River from the beginning point to the ending point as identified above.

9. Annual volume of consumptive use:

This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the “Stipulation”), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Lochsa River Basin upstream from the ending point, as identified in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this

domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of

the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

rights enjoying the subordination provided in this right), the United States is entitled to all flows, up to 80,700 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Middle Fork Clearwater River basin upstream from the ending point of the Middle Fork Clearwater Wild and Scenic River at the town of Kooskia when the stream flow at the Middle Fork Clearwater site exceeds the flow amount in Section 3.a. and is less than 37,900 cfs.

d. The quantification site for the flows identified above is at or above the ending point described below, either: based on the sum of the discharges measured at the USGS Lochsa River near Lowell gage, number 13337000, located in SW1/4SE1/4, Sec. 33, T33N, R7E, Boise Meridian; Latitude N 46° 09' 2.1", Longitude W 115° 35' 10.6", and at the USGS Selway River near Lowell gage, number 13336500, located in SE1/4NE1/4, Sec. 25, T32N, R7E, Boise Meridian; Latitude N 46° 05' 11.6", Longitude W 115° 30' 46.3", or the discharge measured at a new stream gage to be established in the vicinity of the ending point described below.

e. This water right precludes any diversion of water out of the watershed of the Middle Fork Clearwater River Basin upstream from the ending point of the Middle Fork Clearwater Wild and Scenic River at the town of Kooskia, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

October 2, 1968.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Confluence of the Lochsa and Selway Rivers at the town of Lowell, Idaho -- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian; Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".

Ending point: Town of Kooskia, Idaho -- NE1/4SW1/4, Sec. 4, T32N, R4E, Boise Meridian; Latitude N 46° 08' 26.6", Longitude W 115° 57' 54.5".

- 6. Purpose of use:** To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated Middle Fork Clearwater Wild and Scenic River from the beginning point to the ending point as identified above.
- 9. Annual volume of consumptive use:** This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).
- 10. Other provisions necessary for definition or administration of this water right:**
- a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).
 - b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Middle Fork Clearwater River Basin upstream from the ending point, as described in element 5 above:
 - (1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.
 - (2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all

water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied

for after the effective date of the Stipulation with a total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. The 40 cfs of diversion and not more than 500 acres of irrigation are in addition to the 40 cfs of diversion and not more than 500 acres of irrigation from each, the Selway and Lochsa Rivers upstream from their confluence with the Middle Fork Clearwater River. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water

would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

2009 NOV 17 PM 3: 25
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

IN RE: SRBA)
)
) **Consolidated Subcase No. 75-13316**
) **Wild & Scenic Rivers Act Claims**
) **(Encompassing Subcases 75-13316, 77-11941, 77-13844**
) **78-11961, 81-10472, 81-10513 and 81-10625)**
)
CASE NO. 39576) **Amended Order Approving Stipulation and**
) **Entry of Partial Decrees**
)
)
)
_____)

The District Court of the Fifth Judicial District in and for the County of Twin Falls, having entered its Commencement Order on November 19, 1987, commencing the Snake River Basin Adjudication ("SRBA"); the United States of America, the State of Idaho and the other objectors to these consolidated subcases, through their respective counsel, having presented a Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"); due notice of the requested approval of the Stipulation and the proposed entry of the Partial Decrees having been given pursuant to the Idaho Rules of Civil Procedure and the SRBA Court Administrative Order 1; a timely objection having been filed by Thompson Creek Mining Company ("Thompson Creek"); Thompson Creek's objection having been resolved by agreement as to the form of this Order; the Court having reviewed the Stipulation, the proposed Partial Decrees and supporting affidavits and

AMENDED ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES

having heard the parties concerning these matters;

THE SRBA DISTRICT COURT NOW FINDS AS FOLLOWS:

The parties have satisfied the requirements of Chapter 14, Title 42, Idaho Code, including Section 42-1411A, the Idaho Rules of Civil Procedure and SRBA Administrative Order 1. The Stipulation is a fair and equitable settlement of all the United States' claims in the SRBA for federally designated Wild and Scenic Rivers. The Stipulation does not adversely affect the interests of persons not party to the Stipulation and good cause has been shown for granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Partial Decrees for the United States' Wild and Scenic Rivers Act federal reserved water rights claims numbered 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513 and 81-10625, as attached to the Stipulation (the "Partial Decrees"), are hereby ratified, confirmed and approved. The Court shall retain jurisdiction for the purpose of resolving disputes regarding the interpretation and implementation of the Partial Decrees.

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 the 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.

3. Nothing in this Order, the Partial Decrees, or the Stipulation shall affect Thompson Creek's decreed water rights or the stipulated subordination of the United States' Partial Decree for the Main Salmon River to Thompson Creek's decreed water rights that was approved by this Court, nor shall this Order, the Partial Decrees, or the Stipulation be construed as limiting IDWR's authority to administer water rights as provided by State law.

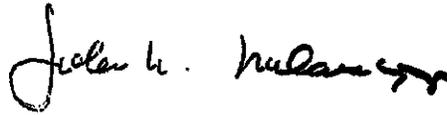
4. Pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, including the stipulated entry of Partial Decrees for these claims and any affidavits or other evidence or pleading submitted or relied upon for approval of the Stipulation, or any offers or compromises made in the course of negotiating the Stipulation, shall be construed as admissions against interest or tendered or used as evidence to support or oppose any party's claims or objections in the SRBA or in any other adjudication involving claims for the same or similar purposes, including the quantities of water claimed, or in any other manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those for interpretation, enforcement or administration of the Stipulation or the Partial Decrees or for a purpose contemplated by Rule 408. This Order is fully in accordance with Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

5. The water rights adjudicated by the Partial Decrees are in full satisfaction of all the United States' claims in the SRBA for federally designated Wild and Scenic Rivers.

6. This *Amended Order* supercedes the *Order Approving Stipulation and Entry of Partial Decrees* dated November 16, 2004, which was issued in error.

IT IS SO ORDERED.

DATED November 17, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the AMENDED ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES was mailed on November 17, 2004, with sufficient first-class postage to the following:

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YELLOWSTONE AGREEMENT

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB 28 2012

By _____ Clerk
Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA) **Subcase Nos.: 21-11958, 21-11959, 21-11960,**
) **21-11961, 21-11962, 21-11963, 21-11964, 21-**
Case No. 39576) **11965, 21-11966, 21-11967 and 21-11968**
))
) **ORDER OF PARTIAL DECREE ON**
) **UNCONTESTED FEDERAL WATER**
) **RIGHT CLAIMS**
))

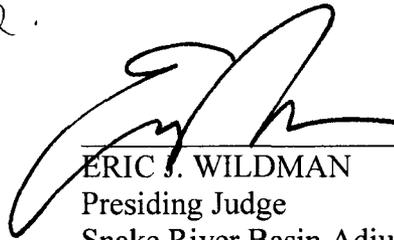
In 1992, the United States and the State of Idaho entered into an agreement entitled *Water Rights Agreement Between the State of Idaho and the United States for Yellowstone* (“*Yellowstone Agreement*”). The stated purpose of the *Yellowstone Agreement* was “to quantify all existing rights of the United States under state and federal law for present and future use of water for [Yellowstone National Park].” By its terms, the *Yellowstone Agreement* related to all waters on, under, adjacent to, or otherwise appurtenant to Yellowstone National Park in the State of Idaho. On September 30, 2011, a *Notice of Filing Federal Reserved Claims in Basin 21 (Yellowstone National Park Claims)* was filed in SRBA main case 00-39576. All claims sought a priority date of March 1, 1872, the date of reservation under the Act of March 1, 1872, Chapter 24, 17 Stat. 32. A copy of the *Yellowstone Agreement* was attached as Exhibit A to the *Notice*. Attached as Exhibit B to the *Notice* were copies of the Idaho Department of Water Resources’ *Director’s Reports* for the above-captioned water right claims. The deadline for filing objections to the claims was November 30, 2011. No objections were filed, and the deadline for filing such objections has expired.

As required by Idaho Code §§ 42-1411A(12) & (14), a hearing was held on February 21, 2012, for the purpose of allowing the United States to demonstrate a *prima facie* case regarding the existence of the above-captioned water rights established under federal law. No party appeared in opposition. The United States filed the *Yellowstone Agreement* in support of its claims. At the time the *Yellowstone Agreement* was entered into, Idaho Code § 42-1409(3) (1990) provided that a claimant of a water right reserved under federal law may submit a

negotiated agreement between the State and the claimant in lieu of a Notice of Claim. The Court has reviewed the *Yellowstone Agreement* and heard the arguments of counsel in open court and finds that the United States has met its burden of establishing the existence and elements of an implied federal reserved water right for each of the above-captioned water right claims.

THEREFORE, IT IS ORDERED that water rights 21-11958, 21-11959, 21-11960, 21-11961, 21-11962, 21-11963, 21-11964, 21-11965, 21-11966, 21-11967 and 21-11968 are hereby decreed as set forth in the attached *Yellowstone Agreement* and ***Partial Decrees*** pursuant to I.R.C.P. 54(b).

Dated February 28, 2012.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

WATER RIGHTS AGREEMENT BETWEEN THE STATE OF IDAHO
AND THE UNITED STATES FOR YELLOWSTONE NATIONAL PARK

The State of Idaho and the United States agree as follows:

1. Preamble

- 1.1 The State of Idaho, pursuant to Idaho Code § 42-1406A (1990), has commenced in the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls a general adjudication of the rights to the use of the water from that portion of the Snake River Basin located within the State of Idaho.
- 1.2 Idaho Code § 42-1409(3) (1990) provides that a claimant of a water right reserved under federal law may submit a negotiated agreement between the State of Idaho and the claimant in lieu of a notice of claim.
- 1.3 Executive Order Nos. 85-9, 87-9, and 91-8 provide that it is in the interest of the State of Idaho to quantify federal reserved water rights through negotiations.
- 1.4 The State of Idaho and the United States desire to exercise the right to submit a negotiated agreement quantifying the rights of the United States to the use of water, pursuant to both federal and Idaho law, for Yellowstone National Park.

2. Definitions

- 2.1 The following definitions apply for the purpose of this Agreement:

- .1 "Acre foot" or "AF" means the amount of water necessary to cover one acre of land to a depth of one foot and is equivalent to 43,560 cubic feet or 325,851 gallons.
- .2 "Acre feet per year" or "AFY" means the number of acre feet of water used in a calendar year commencing January 1 and ending December 31.
- .3 "Annual diversion volume" means the maximum volume of water in AFY that can be diverted or stored by the holder of a water right.
- .4 "Annual volume of consumptive use" means the maximum volume of water in AFY that can be consumptively used by the holder of a water right.
- .5 "Aquifer" means a geologic formation, group of formations, or part of a formation or other body of earth material capable of transmitting water at a rate sufficient for water supply purposes.
- .6 "Basis of right" refers to the legal authority pursuant to which the water right is established or the document by which the right is evidenced.
- .7 "Consumptive use" means the amount of water that is used by any action or process and is not returned to the water system. For an instream flow right, the term "natural consumption" shall mean consumption of water by natural processes.
- .8 "Date of Priority" means the priority date assigned to the water right.

- .9 "Director" means the Director of the Idaho Department of Water Resources or any successor.
- .10 "Diversion" means the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other act of man, or the impoundment of water in a reservoir.
- .11 "Ground water" means any water contained in an aquifer.
- .12 "Idaho Department of Water Resources" or "IDWR" means, the executive agency of the State of Idaho created by Idaho Code § 42-1701 (1990), or any successor agency.
- .13 "Idaho Water Resource Board" means the Idaho State Water Resource Agency constituted in accordance with Idaho Const. art. XV, § 7, or any successor agency.
- .14 "Instream flow use" means the use of water for the maintenance of natural stream conditions.
- .15 "Lake level uses" means the use of water for the maintenance of the natural lake level.
- .16 "Park commercial use" means the use of water for the maintenance and administration of the Park, including visitor centers and other related facilities.
- .17 "Park domestic use" means the use of water for homes, organization camps, and public campgrounds maintained within the Park for visitors and Park personnel use.
- .18 "Park irrigation use" means the application of water to the land surface or root zone of the soil for the

purpose of producing a garden, lawn, or landscaping on Park land.

- .19 "Parties" means the United States and the State of Idaho.
- .20 "Period of use" means the time of the year when water may be used for a particular purpose.
- .21 "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the State of Idaho or any political subdivision, the United States, an Indian tribe, or any other public or private entity. Idaho Code § 42-1401A(8) (1990).
- .22 "Place of use" means the location where water is used.
- .23 "Point of diversion" means any location at which water is diverted from the water system.
- .24 "Purpose of use" means the nature of use of the water right.
- .25 "Right number" means the number assigned to each decreed water right for purposes of identification. The first two numerals of the right number indicate the IDWR's hydrologic basin number.
- .26 "Snake River Basin Adjudication" or "SRBA" means Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987 entitled "In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System," which was commenced pursuant to Idaho Code § 42-1406A (1990).

- .27 "Source" means the named or described source of water within the water system.
- .28 "Surface water" means any lake, spring, creek, stream, river, or other natural body of standing or moving water on the surface of the earth.
- .29 "United States" means the United States of America.
- .30 "Yellowstone National Park" or "Park" means those lands located in Idaho that were withdrawn and reserved by the Act of March 1, 1872, 16 U.S.C. § 21 et seq. 17 Stat. 32.

3. Scope of Agreement

- 3.1 The purpose of this Agreement is to quantify all existing rights of the United States under state and federal law for present and future use of water for the Park.
- 3.2 This Agreement relates to all waters on, under, adjacent to, or otherwise appurtenant to the Park in the State of Idaho.

4. Parties and Authority

- 4.1 The Governor has authority to execute this Agreement pursuant to Idaho Constitution art. IV, § 5, and Idaho Code § 67-802 (1989).
- 4.2 The Idaho Attorney General, or any duly designated official of the Office of the Idaho Attorney General, has authority to execute this Agreement pursuant to the authority to

settle litigation as provided for in Idaho Constitution, art. IV, § 1, and Idaho Code § 67-1401 (1989).

- 4.3 The Idaho Water Resource Board has authority to execute this Agreement pursuant to Idaho Code § 42-1734(3) (1990) and Executive Order Nos. 85-9, 87-9, and 98-1.
- 4.4 The United States Attorney General, or any duly designated official of the United States Department of Justice, has authority to execute this Agreement on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. § 516-517 (1982).
- 4.5 The Secretary of the Interior, or any duly designated official of the United States Department of the Interior, has authority to execute this Agreement on behalf of the United States Department of Interior pursuant to 43 U.S.C. § 1457 (1982).

5. Water Rights of the United States for the Park

- 5.1 The name and address of the claimant for all the water rights negotiated and settled by this Agreement is as follows:

United States of America
c/o National Park Service
Rocky Mountain Regional Office
12795 West Alameda Parkway
Lakewood, Colorado 80225

- 5.2 Water Right For Consumptive Use Under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32:
- .1 Right No. 21-11958.

- .i Source: All surface and ground water sources arising on, occurring on, or underlying the Park.
- .ii Annual Diversion Volume: 1 AFY, except as provided in Article 5.4 *infra*.
- .iii Date of Priority: March 1, 1872.
- .iv Points of Diversion: Any point within the Park.
- .v Purpose of Use: Park commercial use, Park domestic use, and Park irrigation use.
- .vi Period of Use: January 1 - December 31.
- .vii Annual Volume of Consumptive Use: The maximum consumptive use is 1 AFY. The quantity consumed for fire suppression in accordance with Article 5.4 *infra* is not limited by this Agreement.
- .viii Place of Use/Legal Description of Reservation: Any place within the Park.
- .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
- .x Comments: None.

5.3 Water Rights For Nonconsumptive Use Under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32:

- .1 Right No. 21-11959.
 - .i Source: Thirsty Creek and all of its tributaries.

- .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
 - .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of Thirsty Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park, and ending where each segment of Thirsty Creek or any of its tributaries flows out of the Park or across the state line.
 - .v Purpose of Use: Instream flow uses.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .2 Right No. 21-11960.
- .i Source: North Fork Split Creek and all of its tributaries.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].

- .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of North Fork Split Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and ending where each segment of North Fork Split Creek or any of its tributaries flows out of the Park or across the state line.
 - .v Purpose of Use: Instream flow use.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .3 Right No. 21-11961.
- .i Source: South Fork Split Creek and all of its tributaries.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
 - .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of South Fork

Split Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and ending where each segment of South Fork Split Creek or any of its tributaries flows out of the Park or across the state line.

- .v Purpose of Use: Instream flow use.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .4 Right No. 21-11962.
- .i Source: Boundary Creek and all of its tributaries.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
 - .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of Boundary Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and

ending where each segment of Boundary Creek or any of its tributaries flows out of the Park or across the state line.

- .v Purpose of Use: Instream flow use.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .5 Right No. 21-11963.
- .i Source: South Fork Partridge Creek and all of its tributaries.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
 - .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of the South Fork Partridge Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and ending where each segment of the South Fork Partridge Creek or

any of its tributaries flows out of the Park or across the state line.

- .v Purpose of Use: Instream flow use.
- .vi Period of Use: January 1 - December 31.
- .vii Annual Volume of Consumptive Use: None other than natural consumption.
- .viii Place of Use/Legal Description of Reservation: Within the park.
- .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
- .x Comments: None.

.6 Right No. 21-11964.

- .i Source: Robinson Creek and all of its tributaries, including Little Robinson Creek.
- .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
- .iii Date of Priority: March 1, 1872.
- .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of the Robinson Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and ending where each segment of the Robinson Creek or any of its tributaries flows out of the Park or across the state line.
- ↳ .v Purpose of Use: Instream flow use.

- .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .7 Right No. 21-11965.
- .i Source: Rock Creek and all of its tributaries.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
 - .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of the Rock Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and ending where each segment of the Rock Creek or any of its tributaries flows out of the Park or across the state line.
 - .v Purpose of Use: Instream flow use.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.

- .viii Place of Use/Legal Description of
Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of
March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .8 Right No. 21-11966.
- .i Source: Buffalo Lake
 - .ii Amount of Water: The amount of water
necessary to maintain the lake at its natural
level.
 - .iii Date of Priority: March 1, 1872
 - .iv Beginning and Ending Point of Instream Flow:
Not applicable.
 - .v Purpose of Use: Lake level uses.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other
than natural consumption.
 - .viii Place of Use/Legal Description of
Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of
March 1, 1872, ch. XXIV, 17 Stat. 35.
 - .x Comments: None.
- .9 Right No. 21-11967.
- .i Source: Robinson Lake
 - .ii Amount of Water: The amount of water
necessary to maintain the lake at its natural
level.

- .iii Date of Priority: March 1, 1872
 - .iv Beginning and Ending Point of Instream Flow:
Not applicable.
 - .v Purpose of Use: Lake level uses.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of
Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of
March 1, 1872, ch. XXIV, 17 Stat. 35.
 - .x Comments: None.
- .10 Right No. 21-11968.
- .i Source: Unnamed lakes, identified by the
approximate location of their center points as
follows:

<u>Lake No.</u>	<u>Latitude</u>	<u>Longitude</u>
1	44°08'31"N	111°03'27"W
2	44°09'28"N	111°05'23"W
3	44°09'40"N	111°05'00"W
4	44°09'41"N	111°05'40"W
5	44°09'52"N	111°05'21"W
6	44°09'52"N	111°04'48"W
7	44°09'51"N	111°04'31"W
8	44°09'59"N	111°04'38"W
9	44°10'04"N	111°04'54"W
10	44°10'12"N	111°05'19"W
11	44°10'18"N	111°04'43"W
12	44°10'25"N	111°04'12"W
13	44°10'32"N	111°03'25"W
14	44°10'40"N	111°03'56"W
15	44°10'48"N	111°04'02"W
16	44°10'49"N	111°03'38"W
17	44°10'51"N	111°03'40"W
18	44°13'51"N	111°03'29"W

19	44°20'15"N	111°05'28"W
20	44°22'05"N	111°05'13"W
21	44°22'30"N	111°04'04"W
22	44°22'31"N	111°04'03"W
23	44°22'33"N	111°03'59"W
24	44°22'37"N	111°04'04"W

.ii Amount of Water: The amount of water necessary to maintain the lakes at their natural level.

.iii Date of Priority: March 1, 1872.

.iv Beginning and Ending Point of Instream Flow: Not applicable.

✓ .v Purpose: Lake level uses.

.vi Period of Use: January 1 - December 31.

.vii Annual Volume of Consumptive Use: None other than natural consumption.

.viii Place of Use/Legal Description of Reservation: Within the Park.

.ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 35.

.x Comments: None.

5.4 The United States may also divert water for fire suppression in accordance with the following paragraph to be included in the final decree in this matter:

"The use of water for fire suppression benefits the public. Water diverted for fire suppression may be taken randomly, without a definition of the specific elements of a recordable water right, and if so diverted for fire suppression, existing water rights shall not be diminished."

- 5.5 The rights described in this Agreement are Federal Reserved Water Rights with all the characteristics appertaining thereto. Non-use of all or any part of the Federal Reserved Water Rights shall not constitute a relinquishment, forfeiture or abandonment of the rights.
- 5.6 The United States shall not change any element of any Federal Reserved Water Right described in Article 5.
- 5.7 The United States shall manage the Park for the preservation of the natural flow regime of the water system and shall retain the water system in its natural condition; however, this section does not limit the diversion of water under the rights described at Articles 5.2 and 5.4 of this Agreement.
- 5.8 The United States claims such ground water as is necessary to maintain the natural thermal features such as geysers, mudpots, hot springs, and similar features of the Park. Because the parties are not able to quantify or otherwise describe the amount, sources or temperature of ground water that may be required to protect these natural thermal features, this Agreement does not address this claim. Such claim is left for resolution when the need arises. This Agreement quantifies all other ground water right claims of the United States.

6. Finality of Settlement Agreement

- 6.1 The parties agree that this Agreement will be submitted to the Director in lieu of a notice of claim in the SRBA, that

the Director will submit this Agreement and an abstract of this Agreement to the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls as part of a Director's Report, and that state law allows other persons not signatory to this Agreement to file objections to the approval of this Agreement by the District Court.

6.2 The parties agree to move the Court for adoption of a decree awarding the United States the water rights set forth in this Agreement, and to jointly support and defend this Agreement against any and all objections or other challenges that may arise in any phase of the SRBA, including any appeals, and in securing any necessary ratification of the Agreement. If the Court, after notice and hearing, fails to approve the terms of this Agreement, then this Agreement shall be null and void.

6.4 The United States' water rights for the Park confirmed in Agreement 5 shall be final and conclusive as to all parties to the SRBA upon the completion of all judicial proceedings, including any appeals, relative to this Agreement.

7. Disclaimers and Reservation of Rights

7.1 Except for the United States' water rights recognized in Article 5, the United States hereby relinquishes forever any and all existing claims to water under federal and state law from any source for present and future use in the Park.

7.2 This Agreement has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding .

7.3 Entry of judgment as set forth above has been consented to by the parties without trial or adjudication of fact or law herein and without the judgment constituting evidence or an admission by any party, with respect to any such issue, which is, will be, or could be litigated in any proceeding other than the SRBA. See McShan v. Omega Louis Brandt et Frere, S.A., 536 F.2d 516, 519 (2d Cir. 1976). Once this Agreement becomes effective as provided by Article 13.1, the water rights described in Article 5 of this Agreement shall be binding upon all parties to the SRBA, whether signatory to the Agreement or not.

7.4 Nothing in this Agreement shall be so construed or interpreted:

.1 To establish any standard to be used for the quantification of Federal Reserved Water Rights in any judicial or administrative proceeding;

.2 To determine the relative rights inter sese of persons using water under the authority of state law or to authorize the taking of a water right which is vested under state or federal law;

- .3 To limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;
- .4 To restrict the acquisition or exercise of an appropriative right to the use of water under state law, provided the water rights confirmed in this Agreement have been fully used at the time the application is made or are not physically available for use through reasonable diversion facilities.
- .5 To restrict the power of the United States to reserve water in the future, in accordance with applicable law.
- 7.5 Although this Agreement recognizes a water right to the entire flow of several different sources, because of the unique nature of Yellowstone National Park, the Agreement shall not constitute an admission or precedent for any other federal water right claim.
- 7.6 The parties are unable to agree upon who may administer the water rights set forth in this Agreement. Accordingly, this Agreement does not address or resolve this issue. Each party reserves the right to litigate the issue of administration, if and when the issue arises.

8. Severability

- 8.1 This Agreement is not severable.

9. Successors

9.1 This Agreement shall bind and inure to the benefit of the respective successors of the parties.

10. Entire Agreement

10.1 This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.

11. Effect of Headings

11.1 Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.

12. Multiple Originals

12.1 This Agreement is executed in quintuplicate. Each of the five (5) Agreements with an original signature of each party shall be an original.

13. Effective Date

13.1 This Agreement shall be effective when all of the following events have occurred:

.1 This Agreement is executed; and

.2 The water rights described in Article 5 of this Agreement have been confirmed in a decree in the SRBA and such decree has become final and nonappealable.

The parties have executed this Agreement on the date following their respective signatures.



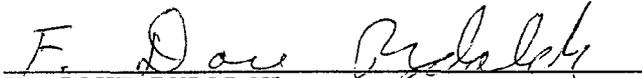
CECIL D. ANDRUS
Governor, State of Idaho

5-13-92
Date



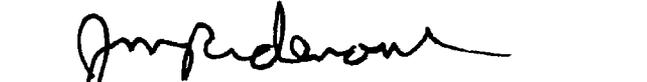
LARRY ECH HAWK
Attorney General, State of Idaho

5-14-92
Date



F. DAVE RYDALCH
Chair, Idaho Water Resource Board

1/16/1992
Date



United States Dept. of the Interior

1/24/92
Date



United States Department of Justice

1/17/92
Date