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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHTS NOS. 36-07210, 36-07427, AND 36-02356A **Blue Lakes Delivery Call**	**SPRING USERS' JOINT PETITION FOR PARTIAL RECONSIDERATION**
IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHTS NOS. 36-04013A, 36-04013B, AND 36-07148 (SNAKE RIVER FARM) **Clear Springs, Snake River Farm Delivery Call**	

COME NOW, Blue Lakes Trout Farm, Inc. ("Blue Lakes") and Clear Springs Foods, Inc. ("Clear Springs") (collectively referred to as the "Spring Users"), by and through their respective counsel of record, and file this Joint Petition for Partial Reconsideration of the Hearing Officer's January 11, 2008 *Opinion Constituting Findings of Fact, conclusions of Law and Recommendation* ("*January 11 Opinion*").

INTRODUCTION

The Spring Users jointly file this brief as a matter of convenience to the Hearing Officer and to conserve space in an already crowded record. The Spring Users do not, by filing this brief, relinquish their status as individual parties to this proceeding. Certain issues and positions discussed in this brief are unique to Blue Lakes or to Clear Springs.

With respect to the proposed agreement concerning the Dairy Association's objection to the Director's 2007 order approving the Association's mitigation plan, and the proposed approval of the Association's prospective mitigation plan, Blue Lakes reiterates that it does not intend to sign or approve the agreement. Clear Springs has approved the agreement in principle.

Only selected portions of the transcript of the hearing are available at this time. Testimony of former Director Dreher, Tim Luke, Cindy Yenter and others that bears on the issues discussed in this brief is not yet available. The Spring Users reserve the right, and may request the opportunity, to provide the Hearing Officer with supplemental briefing based on additional portions of the transcript as they become available.

A. The Director's Consideration of Seasonal Variation in Flows

The Hearing Officer's *Opinion* contains several findings and conclusions regarding the Director's consideration of seasonal flow variations in the 2005 orders. However, the *Opinion* does not appear to squarely address the Spring Users' contentions that the Director erred in: (1) finding that Blue Lakes' 1971 right and Clear Springs' 1955 right are currently "filled," by "seasonal high" flows, when their water supplies are inadequate to fill the rights during substantial portions of the year; (2) in concluding that junior ground water right depletions are not injuring these water rights, and (3) exempting certain priority ground water rights from administration on this basis.

The evidence presented at hearing clearly demonstrates that these water rights are not being filled during substantial portions of the decreed periods of use. To the extent that Blue Lakes' and Clear Springs' "expectations" based on the quantities of water available at the times of appropriation are relevant, the evidence clearly demonstrates that there was ample water to deliver these water rights when they were initiated and perfected. The hearing left no doubt about the fact that junior ground water pumping depletes Blue Lakes' and Clear Springs' water supplies.

The following tables summarize the data and the reasonable inferences that can be drawn from the data showing that Blue Lakes' 1971 right and Clear Springs' 1955 right are not currently filled, and that historic, seasonal flows at the time of appropriation, as well as years thereafter, were adequate to fill these rights.[1]

Blue Lakes

			Status - mos filled & (min. daily flow)				
Rt. No.	Priority	Quantity	1977	1995	2004	2005	2006
02356A	1958	99.83 cfs	12 mos	12 mos	12 mos	12 mos	12 mos
07210	***1971***	***45.00 cfs***	***12 mos***	***7 mos,***	***2 mos,***	***3 mos,***	***3mos,***
		144.83 cfs			***(115.00 cfs)***	***(118.80 cfs)***	***(110.70 cfs)***

Clear Springs

			Status - mos filled & (min daily flow)			
No.	Priority	Quantity	1988-2001	2004	2005	2006
02703	1933	40 cfs	12 mos	12 mos	12 mos	12 mos
02048	1938	20 cfs	12 mos	12 mos	12 mos	12 mos
04013C	1940	14 cfs	12 mos	12 mos	12 mos	12 mos
04013A	***1955***	***15 cfs***	***12 mos***	***6 mos,***	***2 mos,***	***4 mos,***
		89 cfs		***(84.60 cfs)***	***(82.40 cfs)***	***(80.70 cfs)***

[1]The table below identifies various years and months in which the rights were satisfied.

The evidence and the law compel the conclusions that Blue Lakes' 1971 right and Clear Springs' 1955 right are not currently filled and are being materially injured by junior groundwater pumping. Therefore, all ground water rights with priority dates junior to the 1971 and 1955 rights are subject to administration.

1. The 2005 Orders

In each order, under the heading "Authorized Diversion Rate for [the Spring Users' Water Rights]" the Director inferred that "seasonal" or "intra-year" variations in the sources of the Spring Users' water rights "existed when appropriations for these rights were initiated [in the 1950s, 1960s and 1970s]." Ex. 30, *BL Order*, p. 11, ¶ 49; Ex. 138, *CS Order*, p. 12, ¶54. The Director opined that the Spring Users are "not entitled to a water supply that is enhanced beyond the conditions that existed at the time such rights were established." Ex. 30, *BL Order*, p. 11, ¶ 50; Ex. 138, *CS Order*, p. 13, ¶55.

The Director considered "records of flow measurements" and inferred "seasonal variations in spring flows that have existed since the date of appropriation" to support his finding that "the quantity of water available at the source for [Blue Lakes' 1971 right, Clear Springs' 1955 right] is currently sufficient to fill this right at the authorized diversion rate when the flows in [the source of the water right] are at seasonal highs." *See* IDAPA 37.03.11.042.01.a. Ex. 30, *BL Order* at 14, ¶ 64; Ex. 138, *CS Order* at 14, ¶ 61.[2]

These findings led to the Director's conclusions that junior ground water pumping does not injure Blue Lakes' 1971 right or Clear Springs' 1955 right.

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[2]CMR 42.01.a., cited as the basis for this finding, lists "[t]he amount of water available in the source from which the water rights is diverted" as a factor the Director may consider in determining whether senior right holders "are suffering material injury." As in surface-to-surface water right administration, this factor refers to the measurement of the quantity of water currently available at the senior's point of diversion. It does not reference historical diversions.

> Since the records of flow measurements maintained by the Department, beginning in March 1995, show that the quantity of water available at Blue Lakes Trout facilities has been sufficient . . . to fill [Blue Lakes' 1971 right] at the authorized diversion rate of 45.00 cfs when the flows in Alpheus Creek are at seasonal highs, the exercise of junior priority ground water rights have not reduced the quantity of water available for [Blue Lakes' 1971 right]. Therefore there is no material injury to [Blue Lakes' 1971 right].

Ex. 30, *BL Order* at 26, ¶ 25.

> The records of spring discharge diverted to the Snake River Farm . . . show that . . . the quantity of water available at the source for [Clear Springs' 1955 right], taking into account the seasonal variations in spring flows that have existed since the date of appropriation for this right, is also currently sufficient to fill this right at the authorized diversion rate of 15.00 cfs when the discharges from springs providing the source of water for this right are at seasonal highs. Therefore, there is no material injury to [Clear Springs' 1955 right].

Ex. 138, *CS Order* at 32-33, ¶ 24.

On this basis, the Director ordered curtailment or mitigation for ground water rights junior to Blue Lakes' 1973 priority right, exempting ground water rights with priorities between Blue Lakes' 1971 and 1973 rights from administration. Ex. 30, *BL Order* at 28-30. Similarly, the Director ordered curtailment of mitigation for ground water rights junior to Clear Springs' 1964 priority right, exempting ground water rights with priorities between Clear Springs' 1955 and 1964 rights from administration. Ex. 138, *CS Order* at 36-38.

2. The Hearing Officer's January 11, 2008 Opinion

a. Presumption that a senior is entitled to the decreed amount.

The Hearing Officer states that:

> The decreed amount of a water right is a maximum amount to which the right holder is entitled. The right holder is presumed entitled to that amount, and the burden is upon a junior right holder to show a defense to a call for the amount in the partial decree.

Opinion at 10.

This is a correct statement of law to the extent that it refers to recognized defenses, such as forfeiture, futile call, or waste. Unless juniors prove one of these defenses by clear and convincing evidence, the senior is entitled to priority delivery of the full quantity(ies) of its water right(s). The evidence and testimony at hearing confirmed that Blue Lakes' and Clear Springs' water rights are for diversion of water at the stated diversion rates, 24 hours per day, 365 days per year.

The existence of periodic, recurring, seasonal, monthly or other variations in water flows is not a recognized defense to a water delivery call. Water supplies from all water sources vary seasonally. Mr. Luke, manager of IDWR's Water Distribution Division and other witnesses confirmed that priority administration of water rights applies at all times during variability in flows. Hydraulically-connected junior water rights are subject to administration as and when water flows are inadequate to supply senior water rights.

The Hearing Officer's statement affirms the principle that a water right holder is entitled to priority delivery of the decreed quantity absent a junior showing forfeiture, waste, or that the call is futile, appears to be contradicted by later statements in the opinion, such as: "The Spring Users retain the full amount of the adjudicated rights which they can use *when water is available*." *Opinion* at 18 (emphasis added.) This qualification erroneously implies that the priority of a water right does not apply to the full decreed quantity. There is no such qualification expressed in, or imposed or implied by law in a water right.

b. Curtailment of Junior ESPA Ground Water Rights Cannot Produce Greater Spring Flows Than Existed at the Time of Appropriation

The Hearing Officer correctly rejected the Director's supposition that, by calling for delivery of the decreed quantities of their water rights, Blue Lakes and Clear Springs could

somehow seek to "enhance" their water supplies "beyond the conditions that existed at the time such rights were established."

> The concept that curtailment of junior water rights can enhance a senior's rights beyond the amount available at the time the senior's rights were established is not sound. Curtailment of juniors would not put more water in the system than existed prior to the junior's appropriation.

Perhaps if there were more water in the ESPA today than there was at the time of appropriation, the Director's supposition might have some merit. The evidence presented by IDWR and IGWA clearly demonstrate that ESPA water levels have declined since Blue Lakes' and Clear Springs' water rights were established. The recognition that curtailment of ground water rights that did not exist at the time of appropriation cannot enhance the water supply beyond what existed at that time moots any consideration of seasonal variation in water supplies, and should end any further inquiry on this issue.

The Hearing Officer speculates that: "If curtailment were ordered and could provide the full amount of the water rights at the lowest point of the year it seems almost certain that significantly more water would be delivered in the high points of the year than the Spring Users are entitled to receive." *Opinion*, at 18-19. There is no evidence in this case to suggest that curtailment of junior ground water rights could produce seasonal highs that exceed all of Blue Lakes' and Clear Springs water rights. The total quantity of Blue Lakes' water rights 197.06 cfs. From 2004 to 2006, Blue Lakes' monthly high flows were between 140cfs and 150 cfs, which means that Alpheus Creek flows would have to increase by 50 cfs to 60 cfs, or over 40%, just to fill these rights at seasonal highs. *See* Ex. 157, *tables of Blue Lakes' and Clear Springs' diversions produced by Tim Luke* (**copy attached**). The total quantity of Clear Springs' water rights is 117.67 cfs. Its monthly high flows from 2004 to 2006 are between 90 cfs and 93 cfs which means that spring flows would have to increase by up to 28 cfs, or 24%. If IDWR's

modeling and calculations are accurate, there should be no concern that curtailment of junior ground water rights could produce greater water flows, even at seasonal highs, than Blue Lakes or Clear Springs are entitled to divert under their decreed senior surface water rights.

c. Blue Lakes' and Clear Springs Water Supplies at the Time of Appropriation Were Adequate to Fill the 1971 and 1955 Water Rights

The Hearing Officer concludes his discussion of the seasonal variation issue with the following paragraph:

> In context the sense of the Director's finding is that the Spring Users cannot be guaranteed the full amount of the water rights adjudicated every day of the year or every year when that condition has not existed during any relevant time. Consequently, seasonal variations must be considered to determine what the Spring Users would have received throughout the year absent junior water users' appropriations.

Opinion at 19.

As previously discussed, recognition that curtailing junior ground water rights cannot enhance Blue Lakes' or Clear Springs' water supplies beyond what existed at the time appropriated renders inquiry into historic seasonal variations unnecessary. And there are multiple problems with adopting such an approach (discussed in the *Spring Users' Pre-Hearing Memorandum*) not the least of which is the lack of data from which to determine what historic annual flows were at the time of appropriation.

Without waiving any arguments as to the propriety such an inquiry into historically available flows, all the evidence demonstrates that Alpheus Creek flows were adequate to fill Blue Lakes' 1971 priority water right in 1971 and at the time of proof of beneficial use, and that spring flows were adequate to fill Clear Springs' 1955 priority water right at the time it was appropriated.

(1) Blue Lakes' 1971 Water Right

There is no disagreement that ESPA water levels and spring flows were higher during the 1950s, and have been declining since then. Measured Alpheus Creek flows during the 1970s, including those during the year of the beneficial use field exam, show that there was ample water to supply Blue Lakes' 1971 priority water right at all times during the year, even with seasonal variations. Exhibit 18 contains historical USGS measurements of Alpheus Creek flows (**copy attached**). Alpheus Creek flow data from 2004, 1995/1996, (contained in the *Blue Lakes Order* at 13-14, ¶ 60) and 1977 (USGS IDWR field exam) are depicted in Exhibit 205 (**copy attached**). While there is not complete monthly flow data from the 1970s, Mr. Luke and former Director Dreher acknowledged that the seasonal pattern of flow at that time would have been similar to the pattern of today. There is no basis to infer from these facts that Alpheus Creek flows were insufficient to supply Blue Lakes' 1971 right during any time of the year at the time of appropriation. The evidence supports the conclusion that flows were at all times adequate.

(2) Clear Springs' 1955 Water Right

The Department's exhibits, including additional evidence introduced at hearing, demonstrate that Clear Springs' first four water rights, including water right 36-04013A, were satisfied on a year-round basis prior to 2002. Specifically, Exhibit 128 demonstrates that at the low periods of annual spring discharges in April 1971 (100.71 cfs) and May 1972 (101.48 cfs), there was sufficient water to fill Clear Springs' 1955 water right (36-04013) and part of its fifth priority water right (#36-04013B, 27 cfs, 2/4/1964). Testimony from former Director Dreher and the Water District 130 Watermaster, Cindy Yenter, confirmed that seasonal lows in spring discharges typically occur in the spring (April-May timeframe). Accordingly, the evidence

demonstrates that Clear Springs' 1955 water right was likely met on a year-round basis during 1971-72.

In addition, Exhibit 156 plainly demonstrates that Clear Springs' 1955 water right was satisfied on a year-round basis from 1988 through 2001. On cross-examination about the exhibit, Tim Luke, IDWR's Manager of the Water Distribution Section, affirmed that Clear Springs' 1955 water right as satisfied on a year round basis from 1988 through 2001 and that the right was not fulfilled at all times during the year since 2002. *See* December 13, 2007 Transcript of Hearing (audio file questions from Mr. Thompson to Mr. Luke); *see infra*, table at p. 3.

Apart from the Department's exhibits, Clear Springs' expert Dr. Charles Brockway testified as to the spring discharges and the trend of those discharges prior to 1971-72. Dr. Brockway's opinion supports the conclusion that Clear Springs' 1955 right as satisfied on a year-round basis at the time of appropriation. Dr. Brockway's testimony further supports the conclusion that Clear Springs' sixth priority, or 1964 water right, was likely met on a year-round basis at the time of appropriation as well. Accordingly, Clear Springs realized and expected that its 1955 water right would be met at all times during the year. Spring flow data confirms that the right has been fully satisfied on a year-round basis 1988 through 2001. Since the evidence demonstrates that Clear Springs' 1955 water right has not been met at all times during the year since 2002, this water right is being materially injured. The Director's determination that the 1955 water right is not injured because it may be temporarily met as "seasonal highs" is not supported by the evidence, particularly when viewed against the available spring discharges prior to 2002. Therefore, the Hearing Officer's should reconsider the decision on the Director's use of the seasonal variation condition to determine that Clear Springs' 1955 water right was not injured as of July 2005.

d. Since 2002, IDWR Has Acknowledged that Alpheus Creek Flows are Insufficient to Satisfy Blue Lakes' 1971 Right, and has Curtailed Surface Water Rights

The Water District 130 Watermaster, Cindy Yenter, has been curtailing diversions from Alpheus Creek to deliver water to Blue Lakes' 1971 and 1973 water rights since 2002. Exhibit 263 (**copy attached**) is a May 7, 2002 letter from Mrs. Yenter to "Alpheus Creek water users." Enclosed with the letter is a list of water rights to Alpheus Creek and the springs feeding the creek in order of priority. Blue Lakes' 1971 priority water right, no. 36-7210, is identified in the list and in Mrs. Yenter's letter as the "5th priority water right." Mrs. Yenter's letter contains the following "[a]nalysis and [c]onclusions" with respect to Blue Lakes

> The 5th priority water right, held by Blue Lakes Trout, is not being completely filled by the natural flow in Alpheus Creek. Average weekly flows available at the BLT weir from 5/2 to 5/9 filled only about 65% of the right. The average daily flow on May 9 provided for only about 60% of the right.

The letter also states that Blue Lakes' 1973 priority water right, no. 36-7427 is "not presently being filled." The letter states that: "The 6th and 10th priority rights, held by McCollum Simplot and BLCC [i.e. Blue Lakes Country Club], respectively are diverting out of priority order," and advises the water uses that those water rights must be curtailed." The Simplot/McCollum right no. 36-07239, with a 1972 priority, is not subject to curtailment in order to supply Blue Lakes' 1973 priority right, but is subject to curtailment to supply Blue Lakes' 1971 priority right.

Mrs. Yenter has been administering water rights as prescribed in the May 17, 2002 letter to address the water shortages to Blue Lakes' 1971 and 1973 water rights each year since 2002. There is no legitimate factual or legal basis for the Director's 2005 determination that Blue Lakes' 1971 water right is being filled so that administration of junior ground water rights is not required, when IDWR has been curtailing junior surface water rights since 2002 based on the

Watermaster's finding that only 60%-65% of the right is being filled. The failure to consistently administer surface and ground water rights injures not only Blue Lakes, it also injures the junior surface water right rights (i.e. the Simplot/McCollum 1972 right) that are being curtailed while more junior ground water users continue to pump. This is not to say that the junior surface water users should not be curtailed to supply Blue Lakes' 1971 right, but the law does require that ground water rights junior to Blue Lakes' right are also subject to curtailment.

B. The Director Had No Basis to Reduce the Total Quantity of Blue Lakes' Water Rights He Would Recognize for Purposes of Administration

The Director reduced the total quantity of Blue Lakes' water rights that he would recognize for purposes of administration based on an "assumption" that Blue Lakes had not in fact diverted more that 184.7 cfs (Ex. 30, *BL Order*, p. 13, ¶ 59, p. 31, ¶ 31) and his erroneous interpretation and application of the 1993 rotation Agreement (Ex. 21) between Blue Lakes and Blue Lakes Country Club as a subordination agreement that effectively subordinated 1.7 cfs of Blue Lakes' water rights to all junior water rights (**copy attached**) (*Id.*, p. 16, ¶ 73, p. 25, ¶ 21, p. 27, ¶ 31.)

As explained in the *Spring Users' Pre-Hearing Memorandum*, the Director admits that his finding that Blue Lakes has not diverted more than 184.7 cfs is based on an assumption about how water has been diverted and divided in the past, not on any recorded measurement or documented observation. The decreed quantity of Blue Lake's water rights is 197.06 cfs. The Director is precluded from treating Blue Lakes' water rights as authorizing priority delivery of a lesser quantity, particularly where the basis for such treatment is an assumption.

Regarding Blue Lakes 1993 Agreement with Blue Lakes Country Club ("BLCC"), Watermaster Cindy Yenter, who administers the water rights pursuant to that agreement, has explained in her May 17, 2002 letter to Alpheus Creek water users and during her testimony that

it is a "flow rotation agreement," not a subordination agreement. *See* Ex. 263, p. 2. In fact, Mrs. Yenter's May 17, 2002 letter under which the water rights are administer expressly provides for curtailment of BLCC's water rights, and requires that the volume specified in the BLCC's water right that is senior to Blue Lakes' water rights not be exceeded:

> The 10th priority BLCC lienese, 36-8593 which must also be curtailed. This license awarded additional diversion rate to BLCC but not additional acres or volume. The flow rotation agreements between BLCC, BLT and City will be honored, but total diversions by BLCC may not exceed 2.4 acre-feet per day, which is the maximum amount which would be authorized in a 24-hour period at the rate of flow (1.2 cfs) found in BLCC's earliest priority water rights.

Ex. 263, p. 2.

The Director's interpretation of the Agreement as a subordination agreement is clearly erroneous.

The Director's apparent theory for extending a subordination agreement to cover all other water rights is that it would be unfair to others who hold rights junior to the subordinated senior for them to be curtailed out of priority sequence, "leap-frogging" over the junior who entered the agreement. The Director's view is that a water user cannot "selectively subordinate" its water rights. To apply this theory consistently with itself, the Director would have to extend the subordination only to water rights that are senior to the junior who made the agreement. Water rights junior to the one entering the agreement would be curtailed in any case, so there would be no "leap-frogging" past the one right to the theoretical detriment of others.

The Hearing Officer should consider carefully adopting the concept of extending the effect of a subordination agreement beyond the parties involved in it. Numerous parties have entered such agreements to settle water disputes privately, through IDWR administrative proceedings, the SRBA and other judicial proceedings. If this concept is adopted and followed,

subordination or even rotation agreements will no longer be an option as a method to resolve issues between water users.

C. Percentage of Water For Clear Springs' Snake River Farm Facility

In determining the amount of water that would arrive at Clear Springs' Snake River Farm facility in the *July 8 Order*, the Director relied upon USGS measurements for the Buhl Gage to Thousand Springs reach. *July 8 Order* at 5, ¶ 115. The Director concluded that the amount of water authorized under Clear Springs' water rights (117.67 cfs) accounted for 7 percent of the measured reach gains in that spring reach. *Id.*

The evidence provided at the hearing did not support the Director's 7% number or the number he thought was provided by Dr. Allan Wylie (4.2%). *January 11 Opinion* at 21. Accordingly, the Hearing Officer determined that 6.9% should be used, as this was the number Tim Luke indicated was supplied. *See id.* While Clear Springs agrees with the Hearing Officer's decision regarding a "useable quantity", the 6.9% number should be reconsidered based upon the lack of evidence provided by IDWR. Testimony was provided by Dr. Eric Harmon and Dr. Charles Brockway which identified methods to calculate and analyze the percentage of spring flow that could be attributed to the spring complex that supplies water to Clear Springs' Snake River Farm. In the event additional analyses can be completed by or provided to IDWR to update the percentage of spring flow reach gain attributed to Clear Springs' Snake River Farm facility, that evidence should be considered to update the Director's order.

Accordingly, the Hearing Officer's decision on the 6.9% number should be reconsidered to direct IDWR to further identify the appropriate percentage of spring flows that are attributed

to Clear Springs' Snake River Farm facility in the Buhl Gage to Thousand Springs reach based upon additional analyses.

D. Dr. Wylie's Testimony Indicates that the Director's Percentage Reach Gain Calculations are Not Well Founded and Likely Understate the Increases in Water Supplies to Blue Lakes and Clear Springs From Curtailment

Dr. Wylie testified that he was not comfortable with the percentage estimates of flows that would return the Blue Lakes' and the Clear Spring water sources as a result of curtailment. He explained that big spring complexes like the ones supplying Blue Lakes and Clear Springs are big because they receive more water from the aquifer as levels rise. He described the subsurface geology of the portions of the aquifers directly feeding these big springs as "big pipes." Consequently, the Blue Lakes and Clear Springs complexes are likely to receive a greater percentage of the increase in water flows as ESPA levels rise than is suggested by the percentages used by the Director.

The Hearing Officer's *Opinion* appears to give unconditional support to the percentages used by the Director. The Opinion should be modified to reflect Dr. Wylie's testimony and concern so that the record is not incorrectly interpreted to case these percentages in stone.

E. The Hortatory Policy Statements in CMR 20.03 Do Not Support Out-of-Priority Diversions

The Hearing Officer refers to the policy statements of rule 20.03 and references the "public interest," a term not used in the CMRs as rationales for certain aspects of the 2005 orders, such as the 10% "trimline" and the timing of curtailment.

Using broadly defined policy statements to modify administration that would otherwise be required under the prior appropriation doctrine and chapter 6, Title 42 of the Idaho Code is infirm ground for water rights administration that must be tread carefully and cautiously. In its briefing to the district court in *AFRD No. 2 v. IDWR*, IDWR assured the district court that the

CMRs are constitutional because they "emphasize the importance of priority more than any other principle or policy," and explained the role of the Rules' policy statements regarding "reasonable use."

> Further, the provisions of the Rules that deal with reasonableness, efficiency and the policy of full and optimum development are limited and the burden falls on the Director to establish the facts for their application. The plain language of the rules demonstrates that constitutional application is not only easily possible, but probable.
>
> For instance, **Rule 20.03** ('Reasonable Use of Surface and Ground Water') is a 'General Statement of Purpose and Policy' that **recites policy language from the Idaho Constitution and the Idaho Code regarding reasonable use and full and optimum development of the state's water, but imposes no such standards or requirements of its own**. The Rule does not require, instruct or authorize the Director ro apply the stated policies in any particular way, or to reach any particular outcome. **Rule 20.03 is, in name and substance, a 'merely hortatory' statement of general policy and purpose**. *Bonner General Hosp. v. Bonner County*, 133 Idaho 7, 10, 981 P.2d 242, 245 (1999) (holding that a codified statement of legislative purpose that did not purport to impose requirements was 'merely hortatory'). Further, Rule 20.03 explicitly recognizes the rule that first in time is first in right. Rule 20.03 ('reasonable use includes the concepts of priority in time and superiority in right'). Thus, the plain language of Rule 20.03 simply cannot support the argument that Rule 20.03 renders the Rules incapable of valid application under any circumstances. Rather, **the Rule reflects the presumption of priority administration**.
>
> **Rule 42** ('Determining material Injury and Reasonableness of Water Diversions') provides a list of factors that the Director 'may' consider in determining whether a senior is 'using water efficiently and without waste.' Rule 42.01. Thus, on its face, **Rule 42 also respects senior rights and presumes entitlement to the full amount of water absent any proven facts that would require a contrary results** [*sic*] under applicable principles of the prior appropriation doctrine as established by Idaho law. The plain terms of Rule 42.01 demonstrate that a valid and constitutional application of the rules is at least as likely, if nor more so, than any invalid application.
>
> The same analysis applies to Rule **40.03** ('**Reasonable Exercise of Rights**'). Rule 40.03 incorporates the permissive language and factors of Rule 42 expressly and because 'reasonable exercise' under Rule 40.03 requires consideration of whether there has been a 'material injury and whether a senior is 'diverting and using water efficiently and without waste.' Rle 40.03. Thus, Rule 40.03 is identical to Rule

> 42 for purposes of determining what constitutes a 'reasonable exercise of rights.' Accordingly, **under Rule 40.03, there is a presumption the senior has a right to receive the full amount set forth in the partial decree**. It follows that a valid application of Rule 40.03 clearly is possible, and the Rules cannot be facially invalid.
>
> Thus, **the Rules are best and most accurately viewed as presuming that the rule 'first in time is first in right' controls absent facts to the contrary**. The Plaintiffs' argument essentially assumes that the Rules will be used to subject senior rights to some form of strict scrutiny and/or micromanage the senior's use of water. To the contrary, **the permissive and hoartatory nature of the language for considering reasonableness, efficiency, and the policies of optimum and full development of the state's water lends itself to just the opposite; administration in accordance with priority is presumed and required, and the Rules impose a burden on the Director, when responding to a delivery call, to determine a factual basis for distribution less that the full quantity off water stated in the decree**.

Id., p. 18-20 (emphasis added).

The "public interest" is defined in I.C. 42-202B for purposes of evaluating the appropriation of new water rights. There is no such concept in the water distribution statutes of chapter 6 of Title 42. Watermasters and IDWR are in no better position to determine what is in the public interest when distributing water rights than they are able to compare the water users' economic productivity.

All witnesses who testified about the basis for the "trimline" confirmed that it is based on gage error that is estimated to be plus or minus 10%, ad that gage error can be compounded, so that the impact of "trimmed" ground water rights could be twice as much or more than 10%. As such,10% is arbitrary. In his 2005 order the Director found that "all depletions of ground water from the ESPA cause reductions in flows in the Snake River and Sprig discharges equal in quatity to the ground water depletions over time." Ex. 30, *BL Order*, p. 3, ¶ 11. The Hearing Officer has confirmed the Spring Users' calls are not futile.

If policy considerations of the impact of administering water rights in accordance with the prior appropriation doctrine are to be considered at all in terms of what is "reasonable," then the broader impacts of failing to administer out-of-priority junior ground water diversion must also be considered. At a minimum, the "trimmed' water rights should be required to provide mitigation for the impacts of their ground water depletions, because they all affect spring flows to some degree.

CONCLUSION

Blue Lakes and Clear Springs respectfully request the Hearing Officer to reconsider and modify his *January 11, 2008 Opinion* in the particulars and for the reasons explained herein.

Dated this 25th day of January, 2008.

RINGERT CLARK, CHTD.

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2008, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

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360410031 SNAKE RIVER FARM

DISCHARGE, CUBIC FEET PER SECOND, CALENDAR YEAR 2004

MEAN VALUES

DAY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	91.3	90.4	89.1	88	86	86.7	84.6	86	89.7	91.7	90.1	89.8
2	91.3	90.3	89	88	86	86.7	84.6	86	90	91.7	90	89.7
3	91.4	90.2	88.8	87.9	86	86.8	84.6	86.1	90.2	91.7	89.9	89.6
4	91.4	90.1	88.7	87.8	86	86.8	84.6	86.2	90.5	91.8	89.9	89.5
5	91.4	90	88.6	87.8	85.9	86.9	84.6	86.3	90.8	91.8	89.8	89.4
6	91.4	90	88.4	87.6	85.9	86.9	84.8	86.4	91	91.9	89.7	89.2
7	91.3	89.9	88.3	87.5	85.8	87	84.9	86.5	90.9	91.9	89.6	89
8	91.3	89.8	88.2	87.3	85.8	86.9	85.1	86.6	90.8	92	89.5	88.8
9	91.2	89.7	88.4	87.2	85.8	86.8	85.2	86.7	90.7	92	89.7	88.5
10	91.2	89.7	88.6	87	85.7	86.7	85.4	86.9	90.6	92.1	90	88.3
11	91.1	89.8	88.8	86.9	85.7	86.6	85.6	87	90.5	92.1	90.2	88.1
12	91.1	89.8	89	86.7	85.8	86.5	85.7	87.2	90.4	92.3	90.5	87.9
13	91.1	89.8	89.2	86.6	85.8	86.4	85.7	87.4	90.3	92.4	90.7	87.7
14	91	89.9	89.4	86.5	85.9	85.8	85.7	87.5	90	92.6	91	88
15	91	89.9	89.7	86.3	85.9	85.7	85.6	87.7	89.8	92.7	91.2	88.3
16	91	89.9	89.5	86.2	85.9	85.5	85.6	87.8	89.5	92.9	91.1	88.5
17	90.9	89.8	89.4	86.1	86	85.3	85.6	88	89.3	93	90.9	88.8
18	90.9	89.7	89.2	86	86	85.1	85.6	88.2	89	93.2	90.8	89.1
19	90.9	89.6	89.1	85.9	86	85	85.5	88.4	88.8	93.2	90.7	89.4
20	90.9	89.5	88.9	85.9	86.1	84.8	85.6	88.6	88.5	93.1	90.5	89.6
21	90.9	89.4	88.8	85.9	86.1	84.6	85.8	88.7	88.9	93.1	90.4	89.5
22	90.9	89.3	88.6	85.9	86.1	84.6	85.9	88.9	89.4	93	90.3	89.4
23	91	89.2	88.6	86	86.1	84.6	86.1	89.1	89.8	93	90.3	89.2
24	91	89.2	88.5	86	86.1	84.6	86.2	89.1	90.3	92.9	90.3	89.1
25	91	89.2	88.5	86	86.2	84.6	86.4	89.1	90.7	92.9	90.3	89
26	91	89.1	88.4	86	86.2	84.6	86.5	89.2	91.2	92.5	90.3	88.9
27	90.9	89.1	88.3	86	86.3	84.6	86.4	89.2	91.6	92.1	90.3	88.7
28	90.8	89.1	88.3	86	86.4	84.6	86.3	89.2	91.6	91.7	90.2	88.7
29	90.7	89.1	88.2	86	86.5	84.6	86.3	89.2	91.6	91.3	90.1	88.7
30	90.6	---	88.1	86	86.5	84.6	86.2	89.2	91.7	90.9	90	88.7
31	90.5	---	88.1	---	86.6	---	86.1	89.5	---	90.5	---	88.7
TOTAL	2,822.4	2,600.5	2,750.7	2,599.0	2,667.1	2,570.9	2,652.8	2,721.9	2,708.1	2,860.0	2,708.3	2,755.8
MEAN	91.0	89.7	88.7	86.6	86.0	85.7	85.6	87.8	90.3	92.3	90.3	88.9
MIN	90.5	89.1	88.1	85.9	85.7	84.6	84.6	86.0	88.5	90.5	89.5	87.7
MAX	91.4	90.4	89.7	88.0	86.6	87.0	86.5	89.5	91.7	93.2	91.2	89.8
AC-FT	5,598.2	5,158.1	5,456.0	5,155.1	5,290.2	5,099.4	5,261.8	5,398.9	5,371.5	5,672.8	5,371.9	5,466.1

CALENDAR YEAR 2004 TOTAL CFS:32,417.5 TOTAL AC-FT: 64,300

Ex. 157

360410031 SNAKE RIVER FARM

DISCHARGE, CUBIC FEET PER SECOND, CALENDAR YEAR 2005

MEAN VALUES

DAY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	88.7	88.1	87.5	86.4	86.8	85.2	83.6	84.6	87.7	89.5	91.3	87.9
2	88.5	88.2	87.2	86.1	87	85.4	83.7	84.6	87.8	89.7	91	87.9
3	88.3	88.4	87	85.9	87	85.6	83.8	84.7	88	89.8	90.8	87.9
4	88.3	88.5	86.7	85.6	87	85.8	83.9	84.7	88.1	89.9	90.5	87.9
5	88.3	88.6	86.5	85.9	87	86	83.8	84.8	88.2	90	90.3	87.9
6	88.4	88.7	86.2	86.1	87	86.2	83.7	84.8	87.9	90	90.1	87.8
7	88.4	88.9	86	86.4	87	85.9	83.6	84.9	87.7	90.1	89.8	87.7
8	88.4	88.6	85.8	86.7	87	85.5	83.6	84.9	87.4	90.2	89.8	87.6
9	88.4	88.3	85.5	87	87	85.2	83.5	84.9	87.2	90.3	89.8	87.6
10	88.4	88	85.3	87.2	87	84.8	83.4	84.9	86.9	90.3	89.8	87.5
11	88.4	87.7	85	87.5	87.1	84.5	83.3	85	86.7	90.4	89.7	87.4
12	88.4	87.4	84.8	87.3	87.1	84.1	83.2	85	86.4	90.5	89.7	87.3
13	88.4	87.1	84.5	87.1	87.1	83.8	83	85	87	90.6	89.7	87.2
14	88.4	86.7	84.3	86.9	87.2	83.8	82.9	85	87.5	90.8	89.7	87.1
15	88.4	86.7	84.7	86.7	87.2	83.8	82.8	85.1	88.1	90.9	89.6	86.9
16	88.4	86.7	85	86.5	87.2	83.8	82.7	85.3	88.6	91	89.5	86.8
17	88.4	86.6	85.4	86.4	87	83.8	82.5	85.4	89.2	91.1	89.4	86.7
18	88.5	86.6	85.7	86.2	86.9	83.8	82.4	85.6	89.7	91.1	89.3	86.6
19	88.5	86.6	86.1	86.2	86.7	83.7	82.6	85.7	90.3	91.2	89.3	86.5
20	88.6	86.6	86.4	86.2	86.5	83.7	82.8	85.9	90.1	91.2	89.2	86.4
21	88.7	86.6	86.8	86.2	86.4	83.6	83	86	89.9	91.3	89.1	86.4
22	88.7	86.8	86.9	86.2	86.2	83.5	83.2	86.2	89.7	91.3	89	86.3
23	88.8	86.9	87	86.1	86	83.4	83.4	86.4	89.5	91.4	88.8	86.2
24	88.9	87.1	87.1	86.1	85.8	83.3	83.6	86.5	89.3	91.4	88.6	86.1
25	88.8	87.2	87.2	86.1	85.7	83.3	83.7	86.7	89.1	91.4	88.5	86.1
26	88.7	87.4	87.3	86.2	85.5	83.2	83.8	86.8	88.9	91.4	88.3	86
27	88.5	87.5	87.4	86.3	85.3	83.1	84	87	89	91.5	88.2	86
28	88.4	87.7	87.5	86.5	85.2	83.2	84.1	87.1	89.2	91.5	88	86
29	88.3	---	87.2	86.6	85	83.3	84.2	87.3	89.3	91.5	88	86
30	88.2	---	87	86.7	84.8	83.4	84.3	87.4	89.4	91.5	88	86
31	88	---	86.7	---	85	---	84.5	87.6	---	91.5	---	86
TOTAL	2,742.5	2,450.2	2,673.7	2,593.3	2,680.7	2,527.7	2,586.6	2,655.8	2,653.8	2,814.3	2,682.8	2,693.7
MEAN	88.5	87.5	86.2	86.4	86.5	84.3	83.4	85.7	88.5	90.8	89.4	86.9
MIN	88.0	86.6	84.3	85.6	84.8	83.1	82.4	84.6	86.4	89.5	88.0	86.0
MAX	88.9	88.9	87.5	87.5	87.2	86.2	84.5	87.6	90.3	91.5	91.3	87.9
AC-FT	5,439.7	4,860.0	5,303.3	5,143.8	5,317.2	5,013.7	5,130.5	5,267.8	5,263.8	5,582.2	5,321.3	5,343.0

CALENDAR YEAR 2005 TOTAL CFS:31,755.1 TOTAL AC-FT: 62,986

360410031 SNAKE RIVER FARM

DISCHARGE, CUBIC FEET PER SECOND, CALENDAR YEAR 2006

MEAN VALUES

DAY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	86.5	88.5	88	86.9	84.2	83.1	84.4	85.9	90.7	91.1	92.2	91.1
2	86.5	88.5	88.1	86.9	83.9	83.2	84.3	86	91.1	91	92.2	91
3	86.5	88.4	88.2	86.8	83.6	83.3	84.3	86.1	91.4	91.1	92.1	91
4	86.5	88.4	88.3	86.7	83.3	83.3	84.4	86.2	91.8	91.1	92.1	90.9
5	86.5	88.3	88.4	86.6	83	83.4	84.5	86.3	92	91.2	92	91.3
6	86.5	88.3	88.5	86.5	82.7	83.6	84.6	86.4	92.1	91.2	92	91.7
7	86.5	88.3	88.4	86.3	82.4	83.9	84.6	86.5	92.3	91.3	92.2	92.1
8	86.5	88.2	88.3	86.2	82.1	84.1	84.7	86.6	92.4	91.3	92.4	92.4
9	86.5	88.2	88.2	86.1	82.3	84.3	84.8	86.8	92.6	91.4	92.6	92.8
10	86.8	88.1	88	86	82.4	84.5	84.9	86.9	92.7	91.5	92.9	93.2
11	87	88.1	87.9	86.1	82.6	84.8	85	87	92.9	91.5	93.1	93.6
12	87.3	88	87.8	86.1	82.7	85	85	87.1	92.6	91.6	93.3	93.6
13	87.6	88	87.7	86.2	82.9	84.9	85.1	87.3	92.3	91.6	93.5	93.6
14	87.9	87.9	87.6	86.2	83	84.8	85.1	87.4	92	91.7	93.5	93.6
15	88.1	87.7	87.5	86.3	83.2	84.7	85.2	87.5	91.7	91.7	93.4	93.6
16	88.4	87.6	87.4	86.3	82.8	84.6	85.2	87.6	91.4	91.8	93.4	93.6
17	88.3	87.5	87.4	86.4	82.5	84.5	85.3	87.7	91.1	91.8	93.3	93.6
18	88.3	87.4	87.3	86.4	82.1	84.4	85.3	87.8	90.8	91.8	93.3	93.6
19	88.2	87.2	87.2	86.4	81.8	84.3	85.4	87.9	91	91.8	93.2	93.6
20	88.2	87.1	87.1	86.4	81.4	84.3	85.4	88	91.1	91.7	93.2	93.7
21	88.1	87.2	87.1	86.4	81.1	84.4	85.5	88.1	91.3	91.7	92.9	93.7
22	88.1	87.3	87.1	86.4	80.7	84.4	85.5	88.3	91.4	91.7	92.7	93.7
23	88	87.4	87.1	86.4	81	84.4	85.6	88.4	91.6	91.7	92.4	93.7
24	88.1	87.5	87.1	86.4	81.3	84.4	85.6	88.6	91.7	91.8	92.1	93.8
25	88.2	87.6	87.1	86.1	81.6	84.5	85.6	88.8	91.9	91.9	91.8	93.8
26	88.3	87.7	87.1	85.8	82	84.5	85.7	89	91.8	92	91.6	93.8
27	88.3	87.8	87.1	85.5	82.3	84.5	85.7	89.1	91.6	92	91.3	93.8
28	88.4	87.9	87.1	85.1	82.6	84.4	85.7	89.3	91.5	92.1	91.2	93.8
29	88.5	---	87	84.8	82.9	84.4	85.7	89.7	91.4	92.2	91.2	93.8
30	88.6	---	87	84.5	83	84.4	85.8	90	91.3	92.3	91.1	93.8
31	88.6	---	86.9	---	83	---	85.8	90.4	---	92.3	---	93.8
TOTAL	2,715.8	2,460.1	2,715.0	2,585.2	2,556.4	2,527.3	2,639.7	2,718.7	2,751.5	2,840.9	2,774.2	2,885.1
MEAN	87.6	87.9	87.6	86.2	82.5	84.2	85.2	87.7	91.7	91.6	92.5	93.1
MIN	86.5	87.1	86.9	84.5	80.7	83.1	84.3	85.9	90.7	91.0	91.1	90.9
MAX	88.6	88.5	88.5	86.9	84.2	85.0	85.8	90.4	92.9	92.3	93.5	93.8
AC-FT	5,386.8	4,879.6	5,385.2	5,127.7	5,070.6	5,012.9	5,235.8	5,392.5	5,457.6	5,634.9	5,502.6	5,722.6

CALENDAR YEAR 2006 *TOTAL CFS:32,169.9* *TOTAL AC-FT: 63,809*

360410031 SNAKE RIVER FARM

DISCHARGE, CUBIC FEET PER SECOND, CALENDAR YEAR 2007

MEAN VALUES

DAY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	93.6	92.1	92.9--	-	---	---	---	---	---	---	---	---
2	93.3	92.4	92.7--	-	---	---	---	---	---	---	---	---
3	92.9	92.7	92.6--	-	---	---	---	---	---	---	---	---
4	92.6	92.9	92.4--	-	---	---	---	---	---	---	---	---
5	92.2	93.2	92.3--	-	---	---	---	---	---	---	---	---
6	91.9	93.4	92.1--	-	---	---	---	---	---	---	---	---
7	91.5	93.5	91.8--	-	---	---	---	---	---	---	---	---
8	91.2	93.7	91.6--	-	---	---	---	---	---	---	---	---
9	91	93.9	91.4--	-	---	---	---	---	---	---	---	---
10	90.7	94.1	91.2--	-	---	---	---	---	---	---	---	---
11	90.5	94.2	90.9--	-	---	---	---	---	---	---	---	---
12	90.2	94.4	90.7--	-	---	---	---	---	---	---	---	---
13	90	93.9	91	---	---	---	---	---	---	---	---	---
14	89.7	93.5	91.3--	-	---	---	---	---	---	---	---	---
15	89.5	93	91.6--	-	---	---	---	---	---	---	---	---
16	89.9	92.6	92	---	---	---	---	---	---	---	---	---
17	90.2	92.1	92.3--	-	---	---	---	---	---	---	---	---
18	90.6	91.7	92.6--	-	---	---	---	---	---	---	---	---
19	91	91.2	92.9--	-	---	---	---	---	---	---	---	---
20	91.4	91.5	92.8--	-	---	---	---	---	---	---	---	---
21	91.7	91.8	92.7--	-	---	---	---	---	---	---	---	---
22	92.1	92.1	92.6--	-	---	---	---	---	---	---	---	---
23	92	92.4	92.6--	-	---	---	---	---	---	---	---	---
24	91.9	92.7	92.5--	-	---	---	---	---	---	---	---	---
25	91.8	93	92.4--	-	---	---	---	---	---	---	---	---
26	91.6	93.3	92.3--	-	---	---	---	---	---	---	---	---
27	91.5	93.2	92.3--	-	---	---	---	---	---	---	---	---
28	91.4	93	92.3--	-	---	---	---	---	---	---	---	---
29	91.3	---	92.3--	-	---	---	---	---	---	---	---	---
30	91.6	---	92.3--	-	---	---	---	---	---	---	---	---
31	91.8	---	92.3--	-	---	---	---	---	---	---	---	---
TOTAL	2,832.6	2,601.5	2,855.7	---	---	---	---	---	---	---	---	---
MEAN	91.4	92.9	92.1	---	---	---	---	---	---	---	---	---
MIN	89.5	91.2	90.7	---	---	---	---	---	---	---	---	---
MAX	93.6	94.4	92.9	---	---	---	---	---	---	---	---	---
AC-FT	5,618.5	5,160.1	5,664.3	---	---	---	---	---	---	---	---	---

CALENDAR YEAR 2007 TOTAL CFS:8,289.8 TOTAL AC-FT: 16,443

Blue Lakes Trout

360410026 COMBINED INLET

DISCHARGE, CUBIC FEET PER SECOND, CALENDAR YEAR 2004

MEAN VALUES

DAY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	142.8	136.5	134.25	133.65	117.85	122.6	120.95	124.25	132	140.5	148.6	145.7
2	139.95	136.5	135.4	133.1	116.05	122.05	119.85	125.9	132.55	139.9	149.2	145.1
3	141.65	136.5	136.5	130.35	116.05	121.5	120.4	129.25	134.25	140.5	149.8	147.45
4	141.65	137.65	135.95	129.25	116.05	119.3	125.9	130.35	134.25	141.1	150.4	144.5
5	141.05	138.05	135.4	129.2	115.5	119.3	128.1	127.55	136.5	141.65	151	144.5
6	138.2	134.25	135.4	128.65	115.5	120.4	121.5	124.8	138.25	141.1	149.2	144.5
7	137.65	134.85	134.85	129.75	114.95	120.95	120.4	122.6	137.65	141.1	152.65	145.1
8	138.25	134.8	133.65	128.65	114.95	123.15	119.3	122.05	134.8	141.1	149.2	142.8
9	138.8	135.4	132	128.65	114.95	118.75	119.85	124.25	134.85	141.65	149.75	137.65
10	140.5	134.25	131.45	127.55	115.5	121.5	120.95	128.65	135.95	141.65	153.85	137.65
11	139.35	134.25	134.25	128.65	118.75	123.15	121.5	126.45	133.1	142.75	148.65	137.65
12	137.05	134.8	134.8	125.9	123.15	120.4	124.8	125.35	131.45	142.75	147.4	136.5
13	138.2	135.35	135.4	125.9	123.7	120.4	122.05	124.25	133.1	142.75	149.2	138.2
14	138.25	134.8	135.4	124.8	121.5	120.4	119.3	125.9	139.95	142.75	149.2	138.8
15	138.2	134.25	135.95	124.25	119.3	122.05	120.4	127.55	141.65	142.75	148.05	139.35
16	138.2	134.25	134.8	125.35	119.3	123.15	120.4	129.25	139.9	141.65	150.9	136.5
17	137.65	135.35	135.4	127.55	120.95	119.3	120.4	130.9	137.65	148.6	150.35	136.5
18	138.2	136.5	132.55	127.55	124.25	119.3	121.5	130.35	137.65	157.45	151.5	137.05
19	138.2	135.35	134.25	128.65	124.25	118.2	125.35	130.35	139.35	148	148	138.25
20	138.8	134.8	134.25	128.65	123.15	118.2	130.35	130.35	142.2	155.7	148	136.5
21	137.65	135.35	133.7	129.2	122.05	119.85	126.45	128.65	143.95	164.6	146.8	136.5
22	137.65	133.7	132	129.2	125.9	122.05	127	128.1	143.35	157.45	146.8	137.1
23	138.25	133.1	132	127.55	128.1	119.3	123.15	132	141.65	148	147.4	139.35
24	137.65	133.1	132.55	127	125.9	116.05	125.9	134.8	141.1	148.55	151.5	138.8
25	137.05	133.1	132	125.9	124.25	117.15	127	130.35	139.9	148.55	150.35	142.2
26	137.65	133.65	135.4	123.15	123.7	118.2	130.9	131.45	140.5	146.8	151.5	139.35
27	138.8	134.25	135.4	121.5	123.7	119.85	129.25	132.55	141.1	152.15	149.75	141.05
28	138.2	134.25	134.25	124.25	126.45	122.6	122.6	132.55	141.1	147.4	150.35	139.35
29	138.2	134.25	132	125.35	130.3	120.95	120.4	133.1	141.1	152.65	149.75	138.8
30	137.65	---	132	124.8	129.75	120.4	122.6	135.95	141.65	145.7	144.5	139.9
31	137.05	---	133.1	---	126.45	---	122.6	132.55	---	148	---	139.35
TOTAL	4,298.4	3,913.2	4,156.3	3,824.0	3,762.2	3,610.5	3,821.1	3,992.4	4,142.5	4,535.3	4,483.6	4,342.0
MEAN	138.7	134.9	134.1	127.5	121.4	120.4	123.3	128.8	138.1	146.3	149.5	140.1
MIN	137.1	133.1	131.5	121.5	115.0	116.1	119.3	122.1	131.5	139.9	144.5	136.5
MAX	142.8	138.1	136.5	133.7	130.3	123.2	130.9	136.0	144.0	164.6	153.9	147.5
AC-FT	8,525.9	7,761.8	8,244.0	7,584.9	7,462.3	7,161.4	7,579.2	7,918.9	8,216.6	8,995.8	8,893.2	8,612.4

CALENDAR YEAR 2004 TOTAL CFS:48,881.5 TOTAL AC-FT: 96,956

360410026 COMBINED INLET

DISCHARGE, CUBIC FEET PER SECOND, CALENDAR YEAR 2005

MEAN VALUES

DAY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	138.2	136.6	132.3	135.4	128.4	123.9	120.4	123.6	135.4	145	154	150.8
2	137.9	136.4	133.5	134.8	128.1	124.6	120.2	123.3	135.4	146	154.2	149.8
3	137.6	136.2	134.7	134.3	127.8	125.4	119.9	123.1	135.8	147	154.3	149.6
4	137.2	136.1	135.9	133.7	127.6	125.1	119.7	122.8	136.2	148	154.5	149.5
5	136.9	135.9	135.7	133.1	127.3	124.8	119.5	122.6	136.6	149	154.6	149.3
6	136.6	135.8	135.6	132.6	127	124.6	119.2	123.2	137	150	154.6	149.1
7	136.3	135.7	135.4	132	127.4	124.3	119	123.7	137.4	151	154.7	148.9
8	136	135.7	135.3	131.5	127.8	124	118.8	124.3	137.8	150.2	154.8	148.8
9	136.2	135.6	135.1	131.7	128.2	123.7	118.9	124.8	138.2	149.3	154.9	148.6
10	136.3	135.5	135	131.8	128.6	123.8	118.9	125.4	138.9	148.5	154.9	147.8
11	136.5	135.4	134.8	132	129	123.8	119	125.9	139.7	147.6	155	146.9
12	136.6	135.4	134.7	132.1	129.4	123.9	119.1	126.5	140.4	146.8	154.7	146.1
13	136.8	135.2	134.6	132.3	129.8	124	119.2	127.9	141.2	145.9	154.3	145.3
14	136.9	134.9	134.6	132.4	129.7	124	119.2	129.2	141.9	145.1	154	144.4
15	137.1	134.7	134.5	132.6	129.6	124.1	119.3	130.6	142.7	145.5	153.7	143.6
16	137.2	134.4	134.4	132.4	129.5	124.2	119.8	131.9	143.4	145.9	153.4	142.8
17	137.3	134.2	134.3	132.1	129.5	124.3	120.2	133.3	143.6	146.4	153	143
18	137.3	133.9	134.3	131.9	129.4	123.7	120.7	134.6	143.7	146.8	152.7	143.3
19	137.4	133.7	134.5	131.6	129.3	123	121.2	136	143.9	147.2	153.3	143.5
20	137.5	133	134.6	131.4	129.2	122.4	121.7	135.9	144.1	147.6	153.9	143.8
21	137.6	132.3	134.8	131.1	127.9	121.8	122.1	135.8	144.2	148.1	154.5	144
22	137.7	131.5	134.9	130.9	126.7	121.1	122.6	135.7	144.4	148.9	155	144.3
23	137.6	130.8	135.1	130.6	125.4	120.5	122.8	135.7	144.6	149.6	155.6	144.5
24	137.5	130.1	135.2	130.3	124.2	119.9	123.1	135.6	144.5	150.4	156.2	144.3
25	137.4	129.4	135.4	130.1	122.9	120	123.3	135.5	144.4	151.1	156.8	144
26	137.3	128.7	134.3	129.8	121.7	120	123.5	135.4	144.3	151.9	155.8	143.8
27	137.2	129.9	133.1	129.5	120.4	120.1	123.8	135.4	144.2	152.6	154.8	143.5
28	137.1	131.1	132	129.2	121.1	120.2	124	135.4	144.1	153.4	153.8	143.3
29	137.1	---	130.9	129	121.8	120.3	124.3	135.4	144	153.6	152.8	143
30	136.9	---	132.4	128.7	122.5	120.3	124.1	135.4	144	153.7	151.8	142.8
31	136.8	---	133.9	---	123.2	---	123.8	135.4	---	153.9	---	142.8
TOTAL	4,250.0	3,748.1	4,165.8	3,950.9	3,930.4	3,685.8	3,751.3	4,039.3	4,236.0	4,616.0	4,630.6	4,515.2
MEAN	137.1	133.9	134.4	131.7	126.8	122.9	121.0	130.3	141.2	148.9	154.4	145.7
MIN	136.0	128.7	130.9	128.7	120.4	119.9	118.8	122.6	135.4	145.0	151.8	142.8
MAX	138.2	136.6	135.9	135.4	129.8	125.4	124.3	136.0	144.6	153.9	156.8	150.8
AC-FT	8,429.9	7,434.4	8,262.9	7,836.6	7,795.9	7,310.8	7,440.7	8,012.0	8,402.1	9,155.8	9,184.8	8,955.9

CALENDAR YEAR 2005 TOTAL CFS:49,519.4 TOTAL AC-FT: 98,222

360410026 COMBINED INLET

DISCHARGE, CUBIC FEET PER SECOND, CALENDAR YEAR 2006

MEAN VALUES

DAY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	141.7	138.1	141.1	137.1	128.5	114.9	124.8	124.1	134	144.7	151.8	150.9
2	141.5	139	140.7	136.7	128.4	115.2	125.1	125	134.8	144.8	152.3	150.7
3	141.3	139.9	140.4	136.3	128.4	115.5	125.4	125.9	135	145	152.8	150.4
4	141.2	140.8	140	135.9	128.3	116.7	125.7	126.7	135.1	145.2	153.3	150.2
5	141	141.7	139.7	135.5	128.2	117.8	126.1	127.6	135.3	145.4	153.1	149.9
6	140.8	141.2	139.5	135.1	128.1	119	126.4	127.4	135.5	145.5	152.9	149.7
7	140.7	140.7	139.2	134.7	127.5	120.2	126.7	127.3	135.7	145.7	152.7	149.4
8	140.5	140.2	139	134.3	126.8	121.4	127	127.1	135.8	145.6	152.5	149.2
9	140	139.7	138.7	134.4	126.2	122.5	125.8	127	136	145.5	152.3	148.9
10	139.5	139.2	138.5	134.4	125.6	123.7	124.7	126.8	137.1	145.4	152.1	148.5
11	139	138.7	138.2	134.5	125	123.5	123.5	126.7	138.1	145.4	152.3	148.2
12	138.6	138.2	138.3	134.6	124.3	123.2	122.3	126.5	139.2	145.3	152.4	147.9
13	138.1	138.4	138.4	134.7	123.7	123	121.1	127.3	140.2	145.2	152.6	147.6
14	137.6	138.5	138.5	134.7	121.8	122.8	120	128.1	141.3	145.1	152.8	147.2
15	137.1	138.7	138.5	134.8	120	122.6	118.8	128.9	142.3	145.7	153	146.9
16	137.2	138.9	138.6	135	118.1	122.3	118.7	129.6	143.4	146.3	153.1	146.6
17	137.3	139.1	138.7	135.1	116.3	122.1	118.6	130.4	143.6	146.9	153.3	146.4
18	137.4	139.2	138.8	135.3	114.4	121.2	118.5	131.2	143.7	147.4	153	146.1
19	137.4	139.4	138.7	135.4	112.6	120.3	118.5	132	143.9	148	152.8	145.9
20	137.5	139.8	138.6	135.6	110.7	119.4	118.4	131.6	144.1	148.6	152.5	145.6
21	137.6	140.2	138.5	135.7	111.4	118.4	118.3	131.2	144.3	149.2	152.3	145.4
22	137.7	140.6	138.5	135.9	112.1	117.5	118.2	130.8	144.4	149.3	152	145.1
23	137.4	141	138.4	134.9	112.4	116.6	118.7	130.4	144.6	149.4	151.8	145.3
24	137	141.4	138.3	133.8	112.7	116.4	119.1	130	144.6	149.5	151.5	145.4
25	136.7	141.8	138.2	132.8	113	116.3	119.6	129.6	144.6	149.5	151.4	145.6
26	136.4	142.2	138	131.8	113.2	116.1	120.1	129.2	144.6	149.6	151.3	145.8
27	136.1	141.8	137.9	130.8	113.5	116	120.6	130	144.5	149.7	151.2	146
28	135.7	141.5	137.7	129.7	113.8	115.8	121	130.8	144.5	149.8	151.2	146.1
29	135.4	---	137.6	128.7	114.1	115.7	121.5	131.6	144.5	150.3	151.1	146.3
30	136.3	---	137.4	128.6	114.4	120.3	122.4	132.4	144.5	150.8	151	146.3
31	137.2	---	137.3	---	114.7	---	123.2	133.2	---	151.3	---	146.3
TOTAL	4,288.9	3,919.9	4,299.9	4,026.8	3,708.2	3,576.4	3,778.8	3,996.4	4,219.2	4,565.1	4,568.4	4,569.8
MEAN	138.4	140.0	138.7	134.2	119.6	119.2	121.9	128.9	140.6	147.3	152.3	147.4
MIN	135.4	138.1	137.3	128.6	110.7	114.9	118.2	124.1	134.0	144.7	151.0	145.1
MAX	141.7	142.2	141.1	137.1	128.5	123.7	127.0	133.2	144.6	151.3	153.3	150.9
AC-FT	8,507.0	7,775.1	8,528.9	7,987.2	7,355.2	7,093.8	7,495.2	7,926.9	8,368.8	9,054.9	9,061.4	9,064.2

CALENDAR YEAR 2006 TOTAL CFS:49,517.8 TOTAL AC-FT: 98,219

360410026 COMBINED INLET

DISCHARGE, CUBIC FEET PER SECOND, CALENDAR YEAR 2007

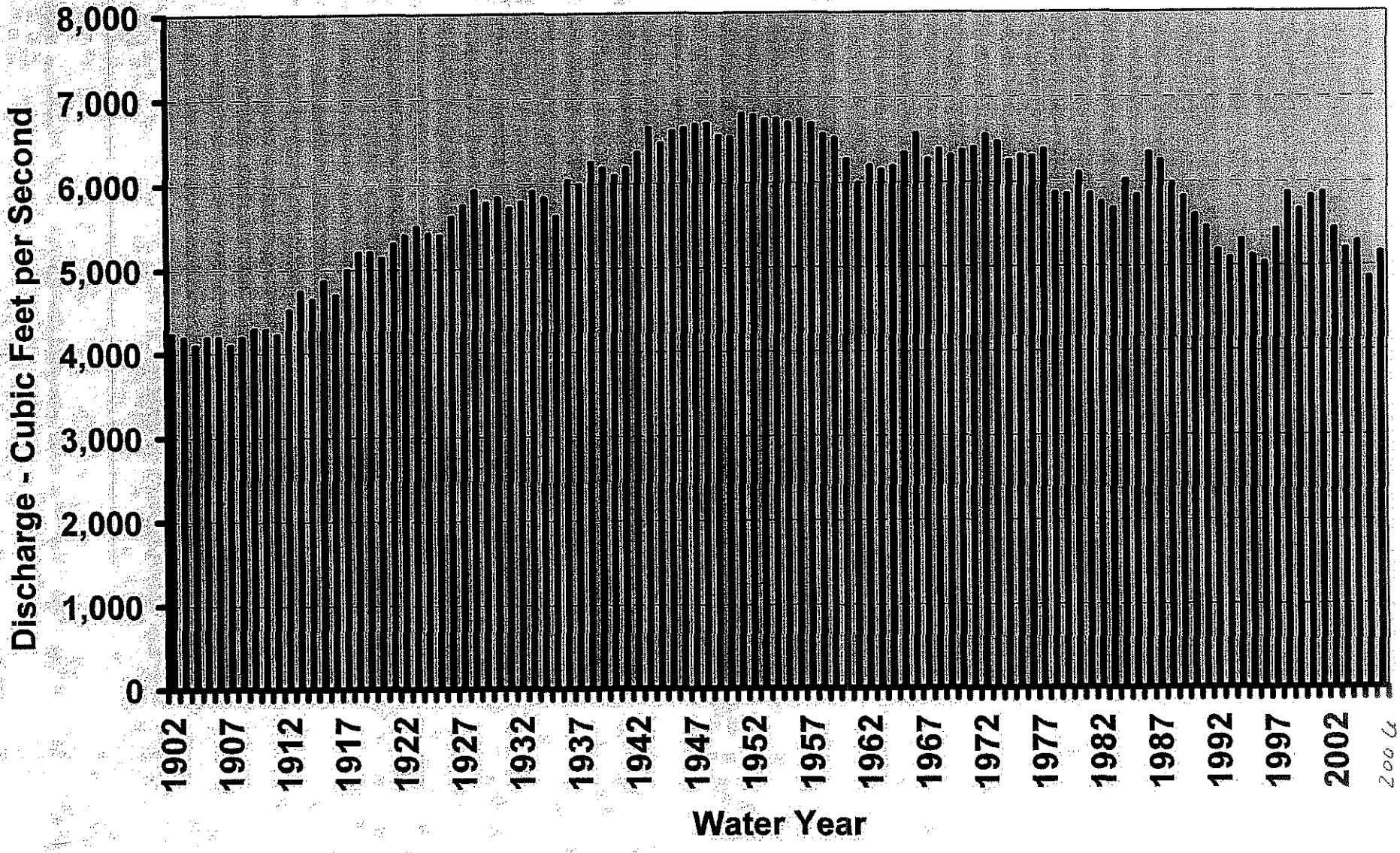
MEAN VALUES

DAY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	144	142.2	146.3	---	---	---	---	---	---	---	---	---
2	145.1	141.7	146.9	---	---	---	---	---	---	---	---	---
3	144.5	142.2	146.9	---	---	---	---	---	---	---	---	---
4	145.1	141.7	146.9	---	---	---	---	---	---	---	---	---
5	145.1	140.5	146.9	---	---	---	---	---	---	---	---	---
6	144.5	146.9	146.9	---	---	---	---	---	---	---	---	---
7	144.5	146.9	146.9	---	---	---	---	---	---	---	---	---
8	145.7	145.7	146.3	---	---	---	---	---	---	---	---	---
9	144	145.7	146.9	---	---	---	---	---	---	---	---	---
10	144	145.7	146.9	---	---	---	---	---	---	---	---	---
11	144	146.9	145.7	---	---	---	---	---	---	---	---	---
12	142.8	145.7	144.6	---	---	---	---	---	---	---	---	---
13	144.5	146.9	146.3	---	---	---	---	---	---	---	---	---
14	144.5	147.4	146.3	---	---	---	---	---	---	---	---	---
15	145.7	145.7	144.6	---	---	---	---	---	---	---	---	---
16	144.6	148	146.9	---	---	---	---	---	---	---	---	---
17	143.4	147.4	146.9	---	---	---	---	---	---	---	---	---
18	142.8	146.3	145.7	---	---	---	---	---	---	---	---	---
19	142.2	146.9	145.7	---	---	---	---	---	---	---	---	---
20	142.2	145.7	145.7	---	---	---	---	---	---	---	---	---
21	143.4	145.7	145.7	---	---	---	---	---	---	---	---	---
22	143.4	145.1	144.6	---	---	---	---	---	---	---	---	---
23	142.8	145.1	144.6	---	---	---	---	---	---	---	---	---
24	143.4	144	144.6	---	---	---	---	---	---	---	---	---
25	142.8	144	144.6	---	---	---	---	---	---	---	---	---
26	142.8	147.4	144.6	---	---	---	---	---	---	---	---	---
27	143.4	146.9	144.6	---	---	---	---	---	---	---	---	---
28	142.8	146.9	144.6	---	---	---	---	---	---	---	---	---
29	142.8	---	144.6	---	---	---	---	---	---	---	---	---
30	142.8	---	144.6	---	---	---	---	---	---	---	---	---
31	142.2	---	144.6	---	---	---	---	---	---	---	---	---
TOTAL	4,455.8	4,071.2	4,517.9	---	---	---	---	---	---	---	---	---
MEAN	143.7	145.4	145.7	---	---	---	---	---	---	---	---	---
MIN	142.2	140.5	144.6	---	---	---	---	---	---	---	---	---
MAX	145.7	148.0	146.9	---	---	---	---	---	---	---	---	---
AC-FT	8,838.1	8,075.2	8,961.3	---	---	---	---	---	---	---	---	---

CALENDAR YEAR 2007 TOTAL CFS:13,044.9 TOTAL AC-FT: 25,875

AVERAGE ANNUAL SPRING DISCHARGE TO SNAKE RIVER IN THOUSAND SPRINGS AREA

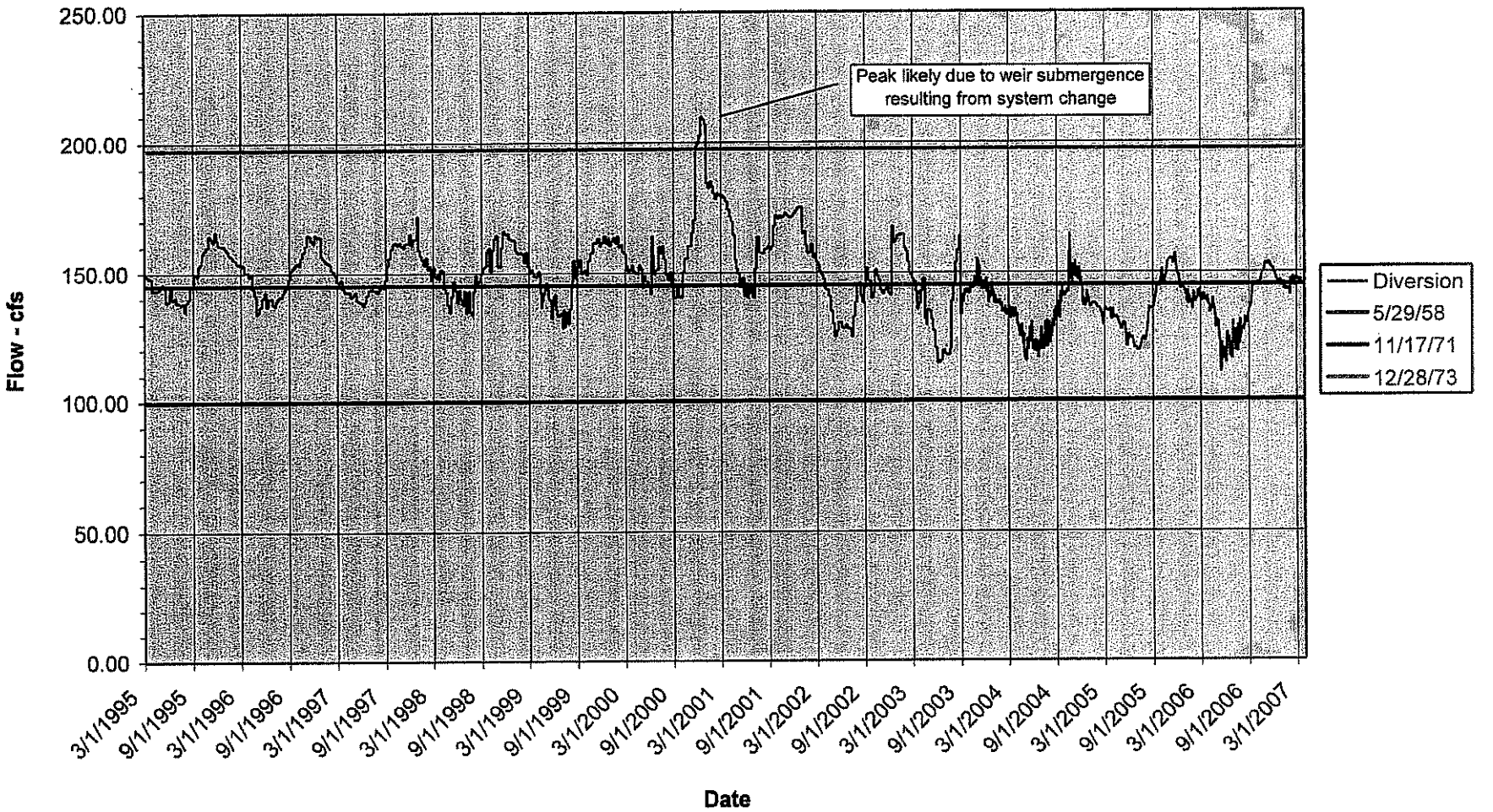
1902-2006



Ex. 154

Blue Lakes Trout Farm Hatchery
Daily Diversions from Alpheus Creek & Water Right Priorities 3/1/1995 - 3/31/2007

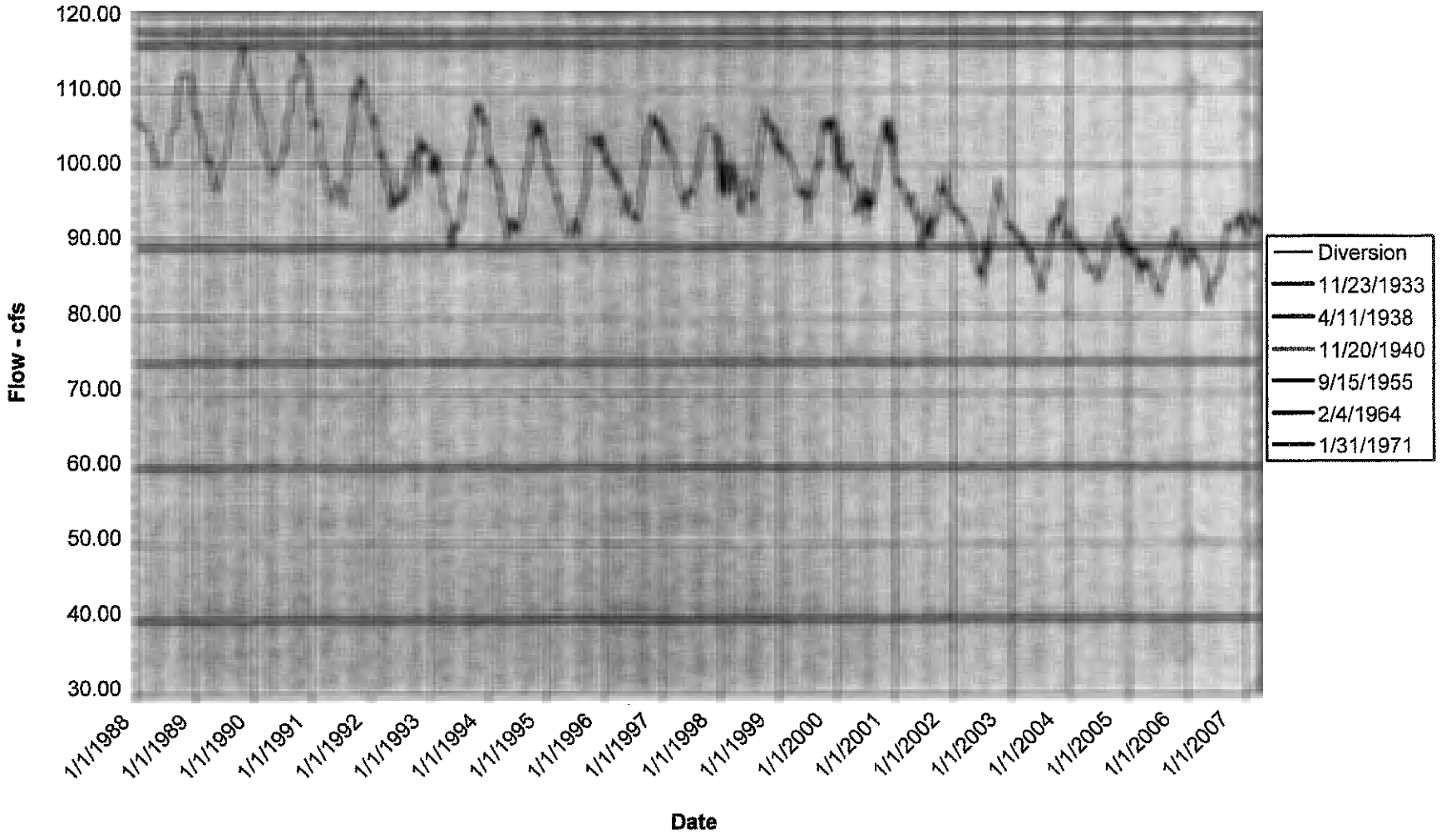
Note: 25.3 cfs is diverted by Blue Lakes from Alpheus Ck. and bypassed to Pristine Springs.
The 25.3 cfs diversion is not included in this graph. See spreadsheet for additional comments.



FIRE

Clear Springs Foods Snake River Farm Hatchery
Weekly Average Diversions & Water Right Priorities, 1988 - 3/31/2007

Diversions do not include the Visitor Center/SPI flows which typically total 0.3 to 0.5 cfs.



Ex 176

Blue Lakes Outlet near Twin Falls, Idaho

#56 March 16, 1999 MAN/PSE — East Weir 143.81
West Weir +36.97
180.78

#57 Nov. 16, 1999 MAN/BEL — East Weir 146.42
West Weir 42.82
189.24

PROVISIONAL RECORDS

Visit Mar 15, 2000 MAW — East weir check boarded to no over flow. West weir reading not accurate. Another spill gate flowing. All because of construction in hatchery. Spoke w/ P.J. Green = assistant manager

(Try in Nov. 2000)

#58 March 7, 2001 MAN/LWD — main channel 192
lower pond 2.99
195 -

#59 Mar. 14, 2002 MAN (current meter) = Main channel 182
Lower pond .85
183

GH = 2.35
Q from broad crested weir table = 172. cfs

#60 Mar 14, 2002 MAW — Main channel 170. cfs
From broad crested weir flow table
GH = 2.34
Lower pond 1.22
171.22

West Pond .60 East Pond .50 = 1.10

#61 March 18, 2004 GH = 2.26 Main channel = 161 — 172.32

Lower Pond (Est) = 2

163 cfs

PROVISIONAL RECORDS

EXHIBIT 18

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. 13-0015.00

Blue Lakes Outlet near Twin Falls, Idaho

#50	March 23,	1995	MAN							East Weir		144	
										West Weir		33.4	
										Total Flow		177.4	
#51	March 13,	996	MAN							East	Weir	141	.21
										West	Weir	+34	.95
										Total	Flow	176	.16
#52	March 19,	1997	KLH/KLM							East	Weir	142	.0
										West	Weir	35	.0
												177	.0
#53	Nov. 18,	1997	KLM							EAST	WEIR	147	.02
										WEST	WEIR	-40	.28
												187	.30
#54	March 19,	1998	KLH/	KLM						East	Weir	141	.95
										West	Weir	34	.15
												176	.10
#55	Nov. 18	1998		MAN						East	Weir	147	.61
										West	Weir	43	.68
												191	.29

PROVISIONAL RECORDS

U.S. GOVERNMENT PRINTING OFFICE : 1980—O-333-648

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. 13-0915.00

Blue Lakes Outlet near Twin Falls, Idaho

Date	By		
March 6, 1990	KLH	PONDS OUTFLOW	6.46
		PERRINE DITCH	194
			190.5
	PROVISIONAL RECORDS		
Nov. 5, 1990	KLH/CLB	PONDS OUTFLOW	7.36
		PERRINE DITCH	198
			205.4
March 25, 1991	KLH/MAN	UPPER POND	3.76
		LOWER POND	+ 2.11
		PERRINE DITCH	+ 176
		Total =	181.9
Mar 3, 1992	JBF, MAN	UPPER POND	2.11
		LOWER POND	0.15
		PERRINE DITCH	169.9
			172.2
March 9, 1993	KLH/BS	Not used	~~1.57~~
		EAST INLET WEIR READING	2.30
		DISCHARGE FROM RATING	133.2
		WEST INLET - RETANGULAR WEIR	1.22
		DISCHARGE FROM RATING	31.4
#49 March 9-1994	CLB	East inlet weir Reading @0815	2.44
		Discharge = 140.00	
		West inlet weir Reading @0814	1.31
		Discharge 35.00	
	PROVISIONAL RECORDS	ΣQ = 175.00	

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. 1202/5.02

BLUE LAKES OUTLET near Twin Falls, Idaho

Date	84		
Mar. 15, 1987	RLB-TJB	Ponds outflow	9.44
		Perrine Ditch	197.
			206.4
Nov. 4, 1987	TJB-KLH	Ponds Outflow	12.77
		Perrine Ditch	201.
			213.8
	PROVISIONAL		
Mar 24, 1988	KLH	Pond outFlow	7.57
		Perrine Ditch	187
			194.6
Nov. 8, 1988	KLH	Ponds outFlow	9.09
		Perrine Ditch	197.00
			206.1
Mar. 31, 1989	KLH	Ponds OutFlow	6.23
		Perrine Ditch	183
			189.2
Nov. 6, 1989	KLH	Ponds outFlow	7.01
		Perrine Ditch	190
			197.0
	PROVISIONAL RECORDS		

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. 13-0915.00

BLUE LAKES OUTLET NR TWIN FALLS, ID.

DATE	BY			
March 19, 1984	FWY	Ponds outflow	7	38
		Perrine ditch	189	
			196	38
	PROVISIONAL RECORDS			
Dec 5, 1994	FWY	Ponds outflow	6	19
		Perrine ditch	198	
	Outlet to river abv ponds (estimate)		6	
			210	19
Mar 19, 1995	FWY	Ponds outflow	5	60
		Perrine ditch	180	
			185	60
		L. channel (estimate)	215	
			188	10 cfs
Nov. 14, 1995	FWY	Ponds outflow	6	65
		Perrine ditch	201	
			207	65
	PROVISIONAL RECORDS			
NOV. 6, 1996	RLB	Ponds outflow	24	9
		Perrine ditch	180	
			205	

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No.

Blue Lakes outlet near Twin Falls, Id

Date				
Mar 29, 1979 RWL	Ponds - outflow		7.92	
	Perrine Ditch		169.8	
	Twin Falls Pumping			
	Valley Fish		6.80	
March 26, 1980 SCC	Ponds - outflow		9.73	
	Perrine Ditch		181.4	
	Twin Falls Pumping		2.0	
	Valley Fish		6.0	
			200.03	
Nov. 6 1980 WHL	Ponds Outflow		7.89	
	Perrine Ditch		210.10	
			217.69	cfs
	PROVISIONAL RECORDS			
March 12 1981 SCC	Pond outflow		7.25	
	Perrine Ditch		183	
			190.25	
	Ext. Valley Fish		6.00	
March 25 1982 JB	Twin Falls Pumping		0	
	Perrine Ditch		177	
	Ponds - outflow		7.36	
	Valley Fish		6	
			190.36	
Mar. 16, 83 FWY	Twin Falls pumping			
	Perrine Ditch		180	
	Ponds outflow		6.52	
	Valley fish		6	
			193	
	PROVISIONAL RECORDS			

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(Rev. 9-67)

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No.

BLUE LAKES OUTLET NEAR TWIN FALLS, IDAHO

DATE														
APR 4	73	ELY	REJ	RIGHT & LEFT CHANNEL							13.5			
				FISH POND CHANNEL							197			
											210.5	cfs		
Mar 28	1974	HRS	KRA	RIGHT + LEFT CHANNEL							114			
				PERRINE DITCH							195			
											206.9	cfs		
				PROVISIONAL RECORDS										
MAR 14	1975	HRS	WHL	RIGHT & LEFT CHANNEL							8.9			
				PERRINE DITCH							201			
											209.9			
Mar 9	1976	ELY	RWH	Right & left channel							18.7			
				Perrine Ditch							200			
											218.7	cfs		
				PROVISIONAL RECORDS										
Mar 3	1977	SCC		Right & Left channel							12.1			
				Perrine Ditch							205.7			
				Twin Falls pumping							7.3			
											225.1	cfs		
Oct 31	1977	SCC		Right & Left Channel							26.2			
				Perrine Ditch							177			
				Twin Falls pumping										
Mar 30	1978	SCC		Right & Left Channel							11.6	cfs		
				Perrine Ditch							197	cfs		
				Twin Falls Pumping							0			
				Valley Fish							6.0 cfs			
				Canyon Springs Golf Course							0			
											204.6			

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. Washington ____ District ____

Blue Lakes Outlet nr Twin Falls Idaho

Date						
Mar 30	1965			Right & Left Channel	98.1	
				Fish Pond Channel	107.0	
					195.1	
April 7	1966			Right & Left Channel	95.4	
				Fish Pond Channel	116.0	
					211.4	
				PROVISIONAL RECORDS		
Mar 21	1967			Right & Left Channel	77.4	
				Fish Pond Channel	139	
					216.4	
Mar 26	1968			Right and Left Channel	60.5	
				Fish Pond Channel	55 140 15.	
					200.5	
Apr 11	1969	ELY	BLO	Right and Left Channel	58.4	
				Fish Pond Channel	146	
					204.4 cfs	
Mar 26	1970	ELY	BLO	Right and Left Channel	52.4	
				Fish Pond Channel		
Oct 19	1970	ELY		Right and Left Channel	81.0	
				Fish Pond Channel	153	
				Twin Falls pumping	7.3	
					241.3	
				PROVISIONAL RECORDS		
Mar 23	1971			Right & Left Channel	32.7	
				Fish Pond Channel	173	
					205.7	

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UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. { Washington ____ / District ____

Blue Lakes Outlet at Twin Falls Ida

Date													
Apr 3	1956	JRS	EBR	Right & Left Channel								276	55
				Fish pond Canal								28	05
												304	60
Apr 3	1957	JRS	ECH	Right & Left Channel								221	-
				Fish Pond Canal								51	3
												272	3
				PROVISIONAL RECORD									
Apr 1	1958	JRS	TNL	Right & Left Channel								175	-
				Fish Pond Canal								48	9
												224	
~~Mar 26~~ Apr 9	1959	JRS	TNL	Right & Left Channel								160	
				Fish Pond Channel								66	
												226	
Mar 28	1963	JRS	SC	Right & Left Channel								121	
				Fish Pond Channel								93	
												214	
				PROVISIONAL RECORD									
Apr 19	1964	J.R.S	S.C.	Right & Left Channel								109	
				Fish Pond Channel								105	
												214	

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. Washington District

Twin Falls Outlet near Twin Falls, Idaho

Date	Party	Rated		Discharges
Mar-17,1950	WIT-RPJ	(G)	RIGHT AND LEFT CHANNEL	198 sec.ft.
			Canal diverting to fish ponds	23.0 sec.ft
				221
MAR 30 1951	JRS-JEC	(G)	RIGHT And left channel	234 cfs.
			Canal diverting to fish ponds.	23.7 cfs.
			PROVISIONAL RECORDS	258
April 10 1952	BMC-JRS	(F)	Right & left channel	230 cfs.
			canal diverting to fish ponds	23.3 cfs
				253
Apr 7, 1953	JRS	JF G	Right and left Channel	222.8
			Canal div. to fish ponds	15.5
				238.3
Mar 29, 1954	JRS	TNL	Channel No. 1	161.47
			" No. 2	67.05
			Ditch	14.24
			PROVISIONAL RECORDS	242.76
Apr 5 1955	JRS	TNL	Right & Left Channel	218.82
				13.57
				232.39

U. S. GOVERNMENT PRINTING OFFICE 16—47721-1

(1) 733-0860 733-1525 713-0915

SNAKE RIVER SPRINGS UNITED STATES Washington
DEPARTMENT OF THE INTERIOR File No. Field
GEOLOGICAL SURVEY
WATER RESOURCES BRANCH Description Prepared 2-27-51
by Wayne I. Travis

733-1525

Miscellaneous Measuring Station on Blue Lakes outlet

Twin Falls, Idaho State of

Lat 42 36 30 Long 114 28 34

Prepare description in accordance with outline on back of Form 9-277. Plot cross section to scale. Use Form 9-275 for sketch and cross section. Initial and date all sheets.

Location.- In SW 1/4 SW 1/4 sec. 28, T. 9 S., R. 17 E., at point of entry to Snake River, 4 miles north of Twin Falls. ~~Reached from Twin Falls~~ Reached from Twin Falls by taking Highway 93 toward Jerome, crossing "Rim to Rim" bridge and turning left into area of Blue Lakes Country Club. After descending grade, take road to right (left fork leads to club house), cross Blue Lakes Creek on narrow bridge, and drive to river. Measuring sections are just downstream from small parking area. Note.- When descending steep grade (use low gear in making descent) measuring bridge and recorder installation of "Blue Lakes Springs" can be seen. This should not be confused with miscellaneous measuring point herein described.

Diversion canal reached by driving to Perrine house (do not cross creek on narrow bridge but continue down Snake River) and walking toward river.

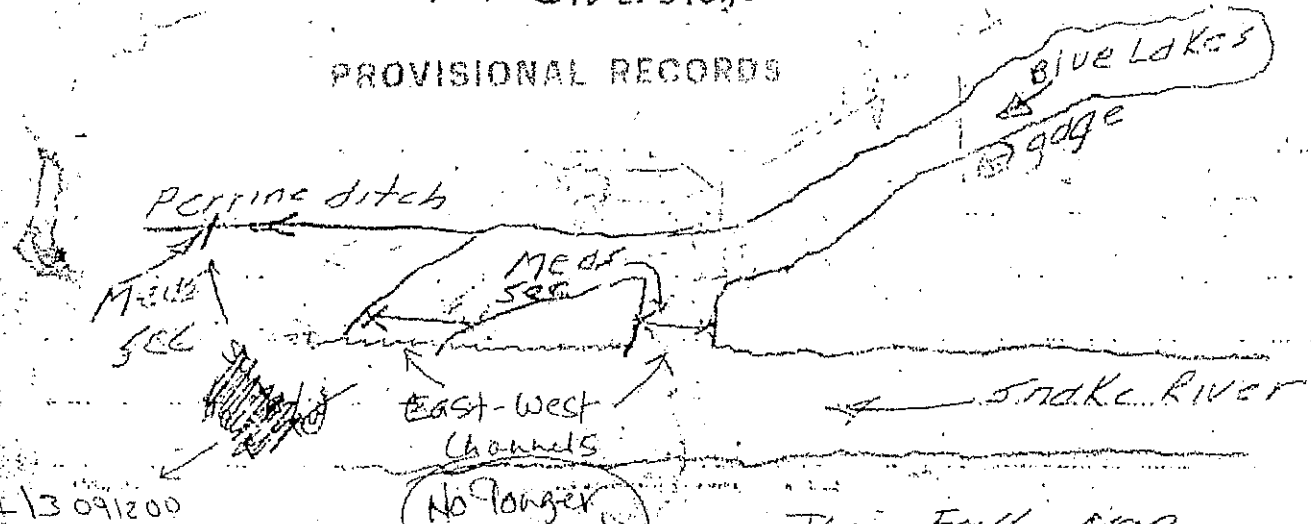
Establishment.- Miscellaneous measurements have been made at this point for a number of years in connection with measurements of "Snake River near Twin Falls. First measurement in connection with present study made 3-17-50 by H. P. Jones and W. I. Travis.

PROVISIONAL RECORDS

Measuring section.- Measurements made by wading in two sections at outlet to river and by wading canal which diverts from the right bank of the creek about 100 yds above mouth. Diversion used to supply Perrine fish hatchery. Canal section is about 200 feet below diversion point and 50 feet downstream from two Lombardi poplar trees on canal bank. None of sections are marked by rods or other referen points. The two outlet channels cannot be measured at high stages of Snake River as backwater makes them too deep for wading. Some backwater is desirable as it improves measuring conditions. Moss may be troublesome at all three sections.

Surface inflow.- None. NOTE! CK with City of Twin Falls. for Diversion

PROVISIONAL RECORDS



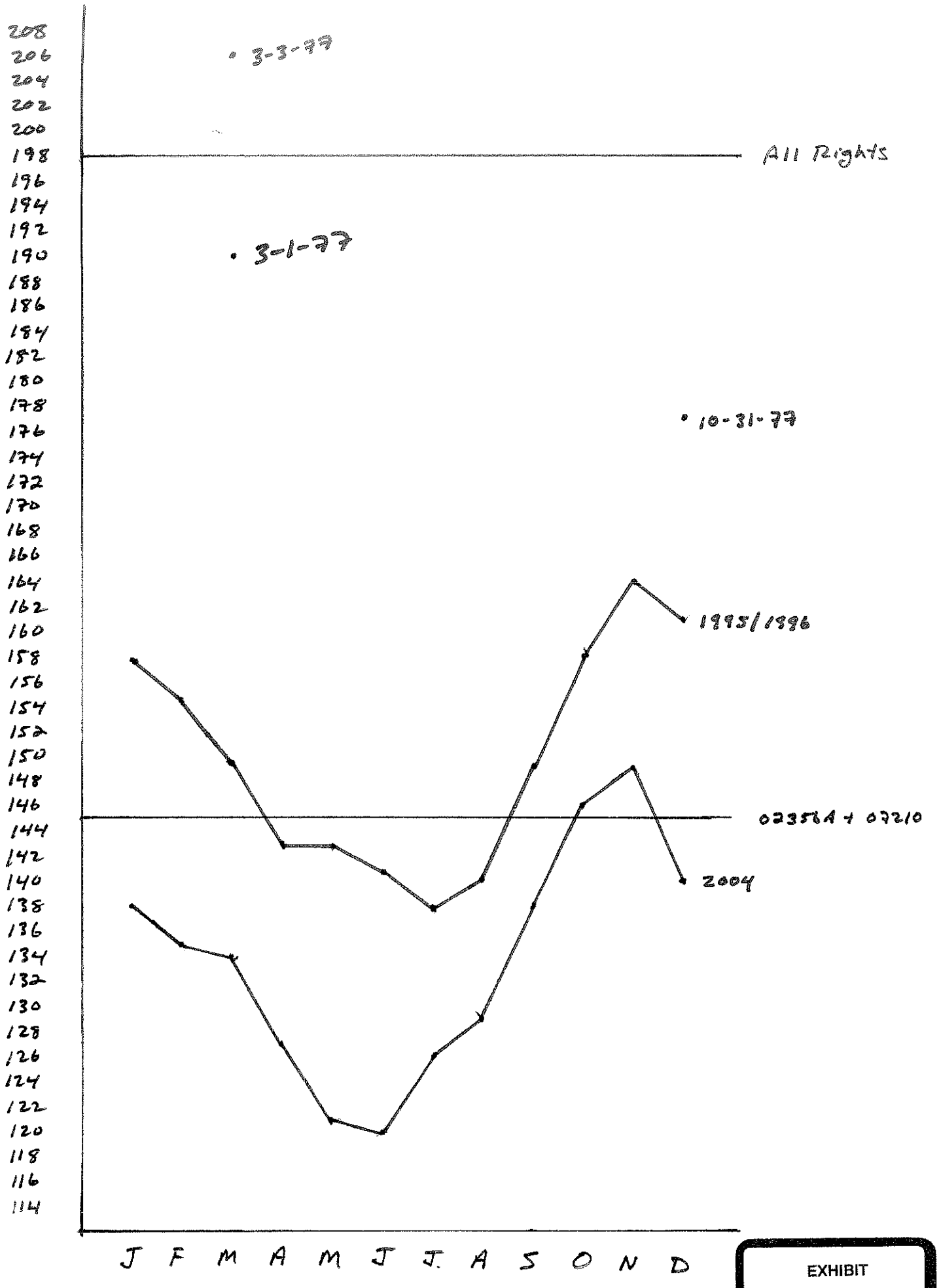

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EXHIBIT

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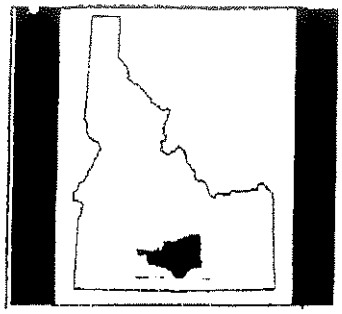

STATE OF IDAHO
WATER DISTRICT 130
C/O IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3380
TELEPHONE NUMBER (208) 736-3033

IDWR DIRECTOR
KARL J DREHER

May 17, 2002

TO: Alpheus Creek Water Users (see attached list)

RE: Regulation of Diversions From Alpheus Creek

FAXED -- FOLLOWED BY MAILED COPY

Water Users:

On Wednesday, May 8, 2002 I received a call for priority delivery on Alpheus Creek. The call came from Blue Lakes Trout Farm, who indicated they were not receiving their full entitlement under water right no. 36-7427, with a priority date of 12/28/1973.

On Monday, May 13, I made contact with the City of Twin Falls (City) and Blue Lakes Trout (BLT) to verify diversions from Alpheus Creek. At the time of my visit, the City was diverting approximately 4.7 cfs. Over a two-week period from April 28 to May 13, the City diverted variable flows averaging 10.4 cfs and peaking at 18.2 cfs. The City indicated their requirements over the next 30 days should be about the same as for the last two weeks. On May 13, the City was monitoring a flow of 5.26 cfs through the McCollum flow meter.

At the time of my visit to Blue Lakes Trout, the measurement at the main weir was 147.9 cfs. This measurement includes both BLT and Pristine Springs diversions from Alpheus Creek. Over a 13-day period from April 26 to May 9, BLT measured variable flows ranging from a high of 164.7 cfs to a low of 149 cfs. Charts from the continuous data recorder at BLT indicate a downward flow trend. Blue Lakes Country Club (BLCC) does not divert during daytime hours, and their pump station was presumed to be off. BLCC holds private rotation agreements with the City and BLT, permitting higher rates of diversion for nighttime irrigation at BLCC

Because of the variable demand by City pumps, and the flow rotation agreements, availability of flows in Alpheus Creek fluctuates at the Blue Lakes Trout weir However, measurements taken between 3:00 and 4:00 pm on May 13, for City of Twin Falls, McCollum and Blue Lakes Trout/Pristine indicate that the total natural flow in Alpheus Creek on May 13 was approximately 158 cfs (4.7 + 5.26 + 147.9). All flows were being diverted The attached chart depicts the Alpheus Creek rights in priority order and a cumulative sum of flows.

Analysis and Conclusions

- The 3rd priority right, held by City of Twin Falls, is being diverted at a reduced rate at the discretion of the owner.
- The 4th priority City right is not being diverted except for a 0.14 cfs portion which has been leased by BLCC and is used during BLCC's normal rotation period.
- The 5th priority water right, held by Blue Lakes Trout, is not being completely filled by the natural flows in Alpheus Creek. Average weekly flows available at the BLT weir from 5/2 to 5/9 filled only about 65% of the right. The average daily flow on May 9 provided for only about 60% of the right.
- The 7th and 9th priority rights, held by BLT and McCollum Simplot, respectively, are not presently being filled. The 8th priority Pristine right is filled only with rediverted flows below BLT.
- The 6th and 10th priority rights, held by McCollum Simplot and BLCC, respectively, are diverting out of priority order.
- As flows continue to decline in Alpheus Creek, availability of flows at BLT will be reduced even further, especially during times when the City pumping rate is high.

Actions

- The 6th priority McCollum/Simplot right 36-7239 must be shut off until further notice. At Mr McCollum's request, he will be granted a reasonable time to ramp down flows in his pipeline and shut the headgate. By this notice, reduction of flows must begin immediately and the headgate must be closed by 12:00 pm (noon) on Monday, May 20, 2002.
- The 10th priority BLCC license 36-8593 which must also be curtailed. This license awarded additional diversion rate to BLCC but not additional acres or volume. The flow rotation agreements between BLCC, BLT and City will be honored, but total diversions by BLCC may not exceed 2.4 acre-feet per day, which is the maximum amount which would be authorized in a 24-hour period at the rate of flow (1.2 cfs) found in BLCC's earliest priority rights.

I will conduct an inspection at noon on May 20 to confirm that the McCollum headgate is closed. At that time I will also be recording measurements at all remaining diversions. I will continue to monitor diversions on Alpheus Creek, including total volume diverted by BLCC, on a weekly basis until flows in the creek rise. If flows continue to drop and another priority cut is necessary, I will notify you again.

Thank you for your cooperation. If you have questions please contact me at 208-736-3033 or 208-731-0901.

Regards,

Cindy Yenter

Cindy Yenter
Watermaster
Water District 130

cc: Tim Luke, IDWR Boise
Allen Merritt, IDWR Southern Region

Rank	Basin	Sequence	Split	Basis	Owner List	Source	Priority Date	Diversion Rate	Cumulative Rate	May 13, 2002 diversion	Cumulative Diversion		
1	36	2083	A	Decreed	BLUE LAKES COUNTRY CLUB INC (Current)	ALPHEUS CREEK	1949/05/26	1.15	1.15	0	0	**	
1	36	2083	B	Decreed	BLUE LAKES COUNTRY CLUB INC (Current)	ALPHEUS CREEK	1949/05/26	0.05	1.2	0	0	**	
2	36	2356	A	Decreed	BLUE LAKES TROUT FARM INC (Current)	ALPHEUS CREEK	1958/05/29	99.83	101.03	99.83	99.83		
3	36	2603	C	Decreed	PRISTINE SPRINGS INC (Current)	ALPHEUS CREEK	1964/04/17	25.3	126.33	25.3	125.13		
3	36	2603	A	Decreed	CITY OF TWIN FALLS (Current)	GROUND WATER	1964/04/17	45	171.33	4.7	129.83		
4	36	2646		Decreed	CITY OF TWIN FALLS (Current)	GROUND WATER	1966/03/29	7.47 *	178.8	0	129.83	**	
5	36	7210		Decreed	BLUE LAKES TROUT FARM INC (Current)	ALPHEUS CREEK	1971/11/17	45	223.8	22.77	152.6		
6	36	7239		Decreed	SIMPLOT MC COLLUM DEVELOPMENT CO (Current)	SPRINGS	1972/04/24	6	229.8	5.26	157.86	*Natural Flow*	
7	36	7427		Decreed	BLUE LAKES TROUT FARM INC (Current)	ALPHEUS CREEK	1973/12/26	52.23	282.03				
8	36	7757		Permit	PRISTINE SPRINGS INC (Current)	ALPHEUS CREEK	1977/10/27	215	*reAverted flows only*				
9	36	15455		Decreed	SIMPLOT MC COLLUM DEVELOPMENT CO (Current)	SPRINGS	1987/03/01	0.46	282.49				
10	36	8593		License	BLUE LAKES COUNTRY CLUB INC (Current)	ALPHEUS CREEK	1991/07/19	0.7	283.19				

* A 0.14 cfs portion of the City of Twin Falls right no. 36-2646 has been placed in the Water Supply Bank and was leased for use by Blue Lakes Country Club for 2002.

** Blue Lakes Country Club rights are diverted in rotation with Blue Lakes Trout and City of Twin Falls rights pursuant to private agreement, therefore they are not counted in cumulative totals.

,19
/ENDELL STARK
RIS TINE SPRINGS INC
AY DRIVE
FALLS ID 83301

10739
PERCY J GREENE
BLUE LAKES TROUT FARM INC
PO BOX 1237
TWIN FALLS ID 83303-1237

10740
MIKE SCHROEDER
CITY OF TWIN FALLS
PO BOX 1907
TWIN FALLS ID 83303-1907

)741
UTCH TADLOCK
RISTINE SPRINGS INC
)1 WARM CREEK RD
EROME ID 83338-6490

10742
DAVID MCCOLLUM
CANYON SPRINGS
PO BOX 112
TWIN FALLS ID 83301

41608
WARREN THORNE
BLUE LAKES COUNTRY CLUB
PO BOX 582
TWIN FALLS ID 83303

WR00022
OHN ROSHOLT
ARKER ROSHOLT SIMPSON
33 2ND ST N STE D
WIN FALLS ID 83301

DWR00023
JASON MICIAK
392 FALLS AVE
TWIN FALLS ID 83301

AGREEMENT

THIS AGREEMENT, made and entered this 29th day of January, 1993, between BLUE LAKES TROUT FARM, INC., an Idaho corporation (hereinafter "Trout") and the BLUE LAKES COUNTRY CLUB, INC., an Idaho corporation (hereinafter "Club");

WHEREAS, Trout and Club own adjoining real estate in the Snake River Canyon in Jerome County, Idaho, and are both dependent on Blue Lakes Springs and Alpheus Creek for the full use of their properties; and

WHEREAS, Club owns Water License No. 21079 (36-02083) with a priority of May 26, 1949, for the use of 1.2 c/f/s for the irrigation of approximately 93 acres with the waters of Alpheus Creek; and

WHEREAS, Trout owns Water Licenses 36-2356 for 100 c/f/s with a May 29, 1958 priority, 36-7427 for 52.23 c/f/s with a December 28, 1973 priority, and 36-7720 for 40 c/f/s with a June 3, 1977 priority, all for fish propagation purposes; and

WHEREAS, the water supply would be sufficient to supply all water rights from the Blue Lakes Spring Complex but for declining spring flows over the last 25 years, which said reductions result in not being able to fill all of the junior rights of Trout; and

WHEREAS, after filing an adjudication claim for the 1.2 c/f/s (diversion rate of 538 g/p/m); it was discovered in 1991 that Club was diverting 1.9 c/f/s (852 g/p/m) so Club obtained Permit 36-08593 to increase the diversion rate to 1.9 c/f/s for the same 93 acres, and finally it was discovered in 1992 that improvements in the sprinkler system would allow diversion of up to 2.9 c/f/s (1,300 g/p/m); and

WHEREAS, diversions of up to 1,300 g/p/m maximum would allow Club to irrigate the same 93 acres in less hours per day, while not exceeding a total consumptive use of 279 acre feet annually, which is the limit on Club's Adjudication Claim No. 36-02083A; and

WHEREAS, a diversion of 538 g/p/m on a 24 hour-a-day basis is less efficient than a nighttime application of 1,300 g/p/m on the same 93 acres for eight hours; and

WHEREAS, the current moratorium of Idaho Department of Water Resources on irrigation diversions precludes Club from seeking a permit to validate a diversion rate of 1,300 g/p/m for a shorter period daily during the irrigation season, but resulting in a total season diversion of approximately 350 acre feet annually, well within the consumption limit of 279 acre feet annually permitted for the 93 acres;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

EXHIBIT 21

1. Trout will not object or protest the Club's diversion or the filing of appropriate paperwork to validate up to 1,300 g/p/m to a maximum diversion of 2.5 acre feet per day during irrigation season of March 15 through November 15 under Adjudication Claim 36-02083A for 1.2 c/f/s, Permit 36-08593 for .7 c/f/s, and a subsequent application for permit for 1.0 c/f/s when the present moratorium goes off, so long as Club does not extend its irrigation to more than 93 acres under said right, with a total maximum diversion of 350 acre feet annually, with a total consumption of no more than 279 acre feet annually.

2. Nothing herein shall prevent Club from developing other water supplies for consumptive use on the premises so long as such supplies are not tributary to Alpheus Creek and subject to the diversion rights of Trout.

3. This Agreement shall bind the parties and their successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto signed this Agreement on the date and year first above written.

BLUE LAKES TROUT FARM, INC., an Idaho corporation

By: _____
President

Attest:

_____
Secretary

BLUE LAKES COUNTRY CLUB, an Idaho corporation

By: _____
President

Attest:

_____
Secretary

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

On this 29th day of January, 1993, before me, a Notary Public, in and for said County and State, personally appeared Perry M. Greene and Medra H. Greene known or identified to me to be the President and Secretary, respectively, of the Blue Lakes Trout Farm, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

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

Dorothy C. Greene
NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls Idaho
My commission expires: 10/1/98

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

On this 2nd day of February, 1993, before me, a Notary Public, in and for said County and State, personally appeared Richard F. Boyd and Linda Kitchie, known or identified to me to be the President and Secretary, respectively, of the Blue Lakes Country Club, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

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

NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls
My commission expires: 6/21/93

01119301LJAR