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The 1990 Fort Hall Water Rights Agreement: A Study in the Federal Trust Responsibility, Indian Self-Determination, and Water Rights Settlement

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The 1990 Fort Hall Water Rights Agreement
a study in
the Federal Trust Responsibility; Indian
Self-Determination; and Water Rights Settlements

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I. INTRODUCTION

The 1990 Fort Hall Water Rights Agreement presents an interesting study of the inherent conflict presented to the United States when an Indian tribe asserts its sovereign authority to manage and control their natural resources. The Fort Hall Water Rights Agreement and the tribe's efforts to reach agreement presented elements of this classic conflict.

Some background in the basic tenets of federal-Indian law will assist in understanding why this conflict arises and whether the federal trust responsibility was fulfilled in this instance.

II. The Trust Responsibility

A. BACKGROUND

1. Development of the Doctrine

The concept of the federal trust responsibility to Indians evolved judicially in the case entitled, Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831). Cherokee Nation was an original action filed in the Supreme Court by the tribe to enjoin enforcement of state laws on land guaranteed to the tribe by treaties. The Court decided that it lacked

original jurisdiction because the tribe, although a "distinct political society" and thus generically a "state" was neither a state of the United States nor a foreign state and therefore not entitled to bring the suit initially in the Court. The court concluded that Indian tribes "may more correctly, perhaps, be denominated domestic dependent nations . . . in a state of pupilage" and that "[t]heir relation to the United States resembles that of a ward to his guardian."

The Court's subsequent decision in Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832), reaffirmed the status of Indian tribes as self-governing entities without elaborating on the nature or meaning of the guardian-ward relationship.

Since Cherokee Nation and Worcester the trust principles articulated in these cases have been applied in many specific situations to establish and protect rights of Indian tribes and individuals.

Trust obligations define the required standard of conduct for federal officials and Congress. Fiduciary duties form the substantive basis for various claims against the federal government. Even more broadly, federal action toward Indians expressed in treaties, agreements, statutes,

executive orders, and administrative regulations is construed in light of the trust responsibility. As a result, the trust relationship is one of the primary cornerstones of federal-Indian law.

2. The Trust Responsibility as a Limitation on Federal Authority

The federal trust responsibility is a very important limitation upon executive authority and discretion to administer Indian property and affairs. For example, the Supreme Court has affirmed an award for money damages for lands excluded from a tribes reservation and sold to non-Indians following an incorrect federal survey of the reservation boundaries. The court based its decision on the federal trust doctrine. Thus, unless Congress has directed otherwise the federal executive is held to a strict standard of compliance with fiduciary duties. Further, the federal executive must exercise due care in its administration of Indian property; it cannot as a result of a negligent survey "give the tribal lands to others, or . . . appropriate them to its own purposes." United States v. Creek Nation, 295 U. S.. 103 (1935).

The application of ordinary trust standards to federal officials is further illuminated by the

federal court decision entitled, Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1972). There, the court struck down a regulation allowing certain diversions of water for a federal reclamation project which adversely affected a downstream lake on an Indian reservation. The court held that the Secretary of the Interior - as trustee for the tribe - was required by his trust responsibility to administer reclamation statutes in a manner which did not interfere with Indian rights. Therefore, unless Congress has specifically directed that Indian property rights be taken, executive officials are obliged to adhere strictly to standard fiduciary principles. This includes a duty of loyalty and the corollary principle that a trustee should subordinate its own interests to those of its beneficiary.

III. The Indian Self-Determination and Education Assistance Act

1. Purpose

The Indian Self-Determination and Education Assistance Act (Act), P.L. 93-638, Act of January 4, 1975 authorizes tribes to contract with the Secretary of the Department of the Interior and the

Secretary of the Department of Health and Human Services services to administer previously authorized programs otherwise administered directly by those Departments. The Act is intended to assure maximum participation by Indian tribes in the planning and administration of federal services, programs and activities for Indian communities.

2. Background and Need

The Federal Government has provided services to Indians for nearly two hundred years. The earliest federal services to Indians were based on treaties and were intended as compensation to Indians for land cessions and other benefits granted to the United States. In negotiating treaties with Indian tribes, the federal government generally offered some type of quid pro quo for land and other tribal concessions. In addition, early federal services to Indians were authorized by statute. For example, the Snyder Act of 1921 authorized the Bureau of Indian Affairs to administer programs "for the benefit, care, and assistance of the Indians throughout the United States." The broad declaration of purposes contained in the Snyder Act provides congressional authorization for

expenditures for many BIA activities.

Since the 1930's, the reassertion of tribal self-government, coupled with a growing federal interest in decentralization, have resulted in an increase in services initiated or administered by Indian tribes. This development was stimulated by passage of the Indian Reorganization Act of 1934. The 1934 Act began a trend of transferring control of federal services to tribes reorganized under the Act.

The self-determination policy is premised on the notion that Indian tribes are the basic governmental units of Indian policy. The self-determination policy was first formally enunciated in 1970 by President Richard Nixon. In his Special Message to the Congress on Indian Affairs, Pub. Papers 564, 567 (President Richard M. Nixon), President Nixon explained that

For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact

that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the Federal authorities and not the Indian people who finally make that decision. This situation should be reversed. In my judgment, it should be up to the Indian tribe to determine whether it is willing to assume administrative responsibility for a service program which is presently administered by a Federal agency.

In fact, the Act has been a major reason for assumption by Indian tribes of responsibility for federal Indian programs.

The federal policy of Indian self-determination is also premised upon the legal (trust) relationship between the United States and Indian tribal governments. The present right of Indian tribes to govern their members and territories flows from preexisting sovereignty limited, but not abolished, by their inclusion within the territorial bounds of the United States. Tribal powers of self-government today are recognized by the Constitution, Acts of Congress, treaties between the United States and Indian tribes, judicial decisions, and administrative practice.

IV. The Fort Hall Indian Water Rights Settlement of 1990

After five years of negotiations, the State of Idaho, Idaho water users, the Shoshone-Bannock Tribe of the Fort Hall Indian Reservation, and the federal government reached an agreement regarding the tribe's water rights in the Snake River Basin upstream from Hells Canyon Dam. The settlement addresses not only the quantification of water rights, but also access to supplemental storage space, administration of water rights, and means to mitigate impacts to non-Indian water rights.

The settlement quantifies the tribe annual Winters water rights at 581,031 acre-feet from a combination of sources including natural flow, groundwater, and federal contract storage water. Tribal water rights may be used for present and future irrigation, domestic, commercial, municipal industrial, hydropower and stock water uses. Storage water may be used for in-stream flows on reaches of river on and adjacent to the reservation. All of the natural flow and groundwater rights are water rights reserved under the Winters doctrine for use on the Fort Hall Indian Reservation.

Under the Agreement, the Fort Hall Indian Irrigation Project water users will continue to receive their full project water entitlement under their project contracts. Because non-Indian Snake River water users will be adversely impacted by the implementation of the tribes' Snake River water rights, the United States will make available to non-Indian water users unallocated storage water in federal reservoirs to mitigate the impact to these non-Indian Snake River water users. This stored water will be released as necessary to offset the impact of the tribal use of Snake River water right.

The Agreement allows the tribe to create a water bank created under Idaho law to rent any or all of their water accruing to federal contract storage rights held in trust for the tribe in the Upper Snake River Basin. This water can be used for any beneficial use outside the reservation as long as the water from these federal reservoirs is leased and delivered for use in the Snake River Basin in Idaho. Further, the tribe has the right, under the agreement, to transfer or lease all or any tribal water rights within the reservation.

The administration of water rights was an important and intensely debated topic of the negotiations. The agreement recognizes that Idaho has authority to administer water rights in the Snake River, including federal and tribal water rights, up to the point of diversion. The term administration, in the context of this agreement, is limited to include water right accounting and ensuring the delivery of water to all users, including the United States and the Tribe. Once water is diverted administration of the tribal water rights will be the responsibility of the tribe. The Fort Hall Indian Irrigation Project water rights will be administered by the United States and the tribe.

The Agreement creates a three-member "Intergovernmental Board" (IGB) which is composed of the Chairman of the Fort Hall Business Council, the Director of the Idaho Department of Water Resources, and the Secretary of the Interior. The IGB is intended to serve two functions. First, it would mediate or otherwise resolve disputes arising under the Agreement. However, the IGB has no legal authority to direct a party to do something, and any unresolved disputes would go before a court de novo. The second function is to provide a place for hearing disputes concerning changes in points of

diversion or periods of use of the tribal water right to the Snake River.

Finally, the tribe will receive a settlement fund to be paid over several years for the purposes of economic development, for a reservation wide water management control system, and for acquiring land, grazing rights, and related improvements for the Fort Hall Indian Irrigation Project. In addition, the tribe will receive from the State of Idaho in-kind services and monies to assist the tribe in implementing the agreement.

V. Discussion of the Federal Policy Goals in the Context of the Fort Hall Indian Water Rights Settlement of 1990.

Important federal policy goals were achieved by the Fort Hall agreement. These goals included fulfillment of the United States trust responsibility by protecting Indian water resources, promotion of tribal self-determination together with strong and responsible tribal governments, and assurance that tribes are able to realize the full value of their water rights by providing them with "wet water" and an opportunity to "market" their water for value. The protection of the federal

fisc, and reduction of conflict between Indians and their non-Indian neighbors were also major federal policy goals of these negotiations.

Further, the Fort Hall agreement has numerous environmental benefits. In addition to the wetlands preserved by the water exchanges contained in the agreement, permitting the Tribe to market some of their water will be of great assistance to enhancing the flows of the Snake River which are necessary for the threatened migratory salmon and steelhead.

The Agreement achieves these federal goals in the following ways. First, the Tribe and the United States will be decreed a firm water supply in amounts sufficient to meet all their present and reasonably foreseeable future needs. In drought years, the Tribe will feel little or no adverse impacts in contrast to their non-Indian neighbors with junior priority dates.

Second, the Tribe has the option to market annually the water accruing to storage space in federal reservoirs in accordance with a tribal water bank run by the Tribe. This feature affects several federal policy goals. It provides income to the tribe, thus allowing them to become more

self-sufficient. It encourages the tribe to develop a sophistication in financial matters and will promote a strong tribal government. Finally, it encourages the tribe and their neighbors to solve problems caused by an insufficient water supply.

Third, the Tribe is encouraged and provided with financial assistance to take a more active role in developing a tribal water management regime which meets tribal goals and objectives. The future development of the tribal infrastructure to manage the tribal water supply, including operation and management of the Fort Hall Indian Irrigation Project pursuant to the mandates of the Indian Self-Determination Act, was a major federal goal of these negotiations.

Fourth, conflict between Indian and non-Indian water users will be reduced by providing certainty as the tribal water right by encouraging conflict resolution through an Inter-Governmental Board created for the sole purpose of mediating future disputes in the first instance.

Finally, the Agreement protects the federal treasury because no new economically and environmentally unjustifiable water development projects are to be

constructed. Unlike some prior Indian water right settlements involving federal contributions in excess of \$100 million for water projects of questionable economic justification and substantial environmental costs, the parties to the Fort Hall agreement have developed creative solutions designed to facilitate better use of existing supplies with no added financial or environmental costs.

VI. Conclusion

The settlement of the water rights claims of the Shoshone-Bannock Tribe of the Fort Hall Reservation was possible because the tribe realized they were at a historic turning point regarding the use and management of their water resources. It was a point marked by formidable challenges and unprecedented opportunities. The decision to litigate or negotiate was no doubt a difficult one and faced with some hesitation. The fact that the tribe chose to negotiate may very well be the ultimate turning point in the history of the tribes, the State of Idaho and the United States.

Indian tribes and their membership have every reason to be suspicious of an intergovernmental water agreement entered into between a tribe, a state and

the United States. The long history of unfortunate and unequal experiences with negotiated settlements in many treaties, claims settlements in general and other agreements with the United States, are prominent examples of bargained agreements which required Indians to give up vast amounts of land and their traditional way of life.

The Tribe, State of Idaho and the United States grappled with the evolving and sometime elusive law of Indian water rights in this era of Indian self-determination. The Fort Hall Water Rights Settlement of 1990 is the product of that effort. The Agreement represents a good faith attempt to resolve continuing disputes over the waters of the Snake River system. Although the Agreement does not resolve all issues surrounding Indian water rights and does not preclude litigation, the parties have proceeded in a mode of negotiation and compromise that will allow all parties to protect, preserve, and develop their vital natural resources, and meet their future interests and goals.

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

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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**

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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

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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

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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.

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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.

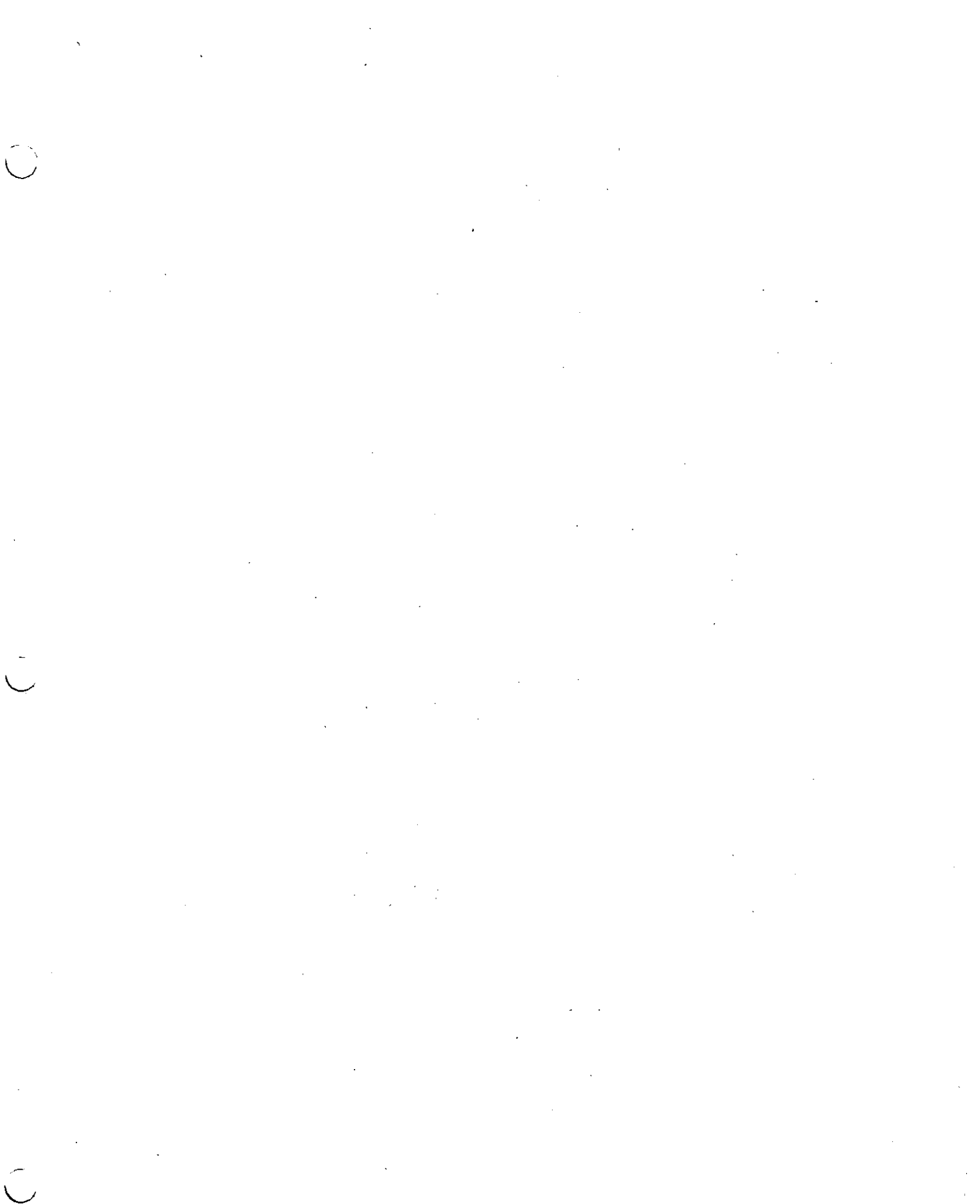
4.2 "Acre feet per year" or "AFY" means the number of acre feet of water used from January 1 to December 31.

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

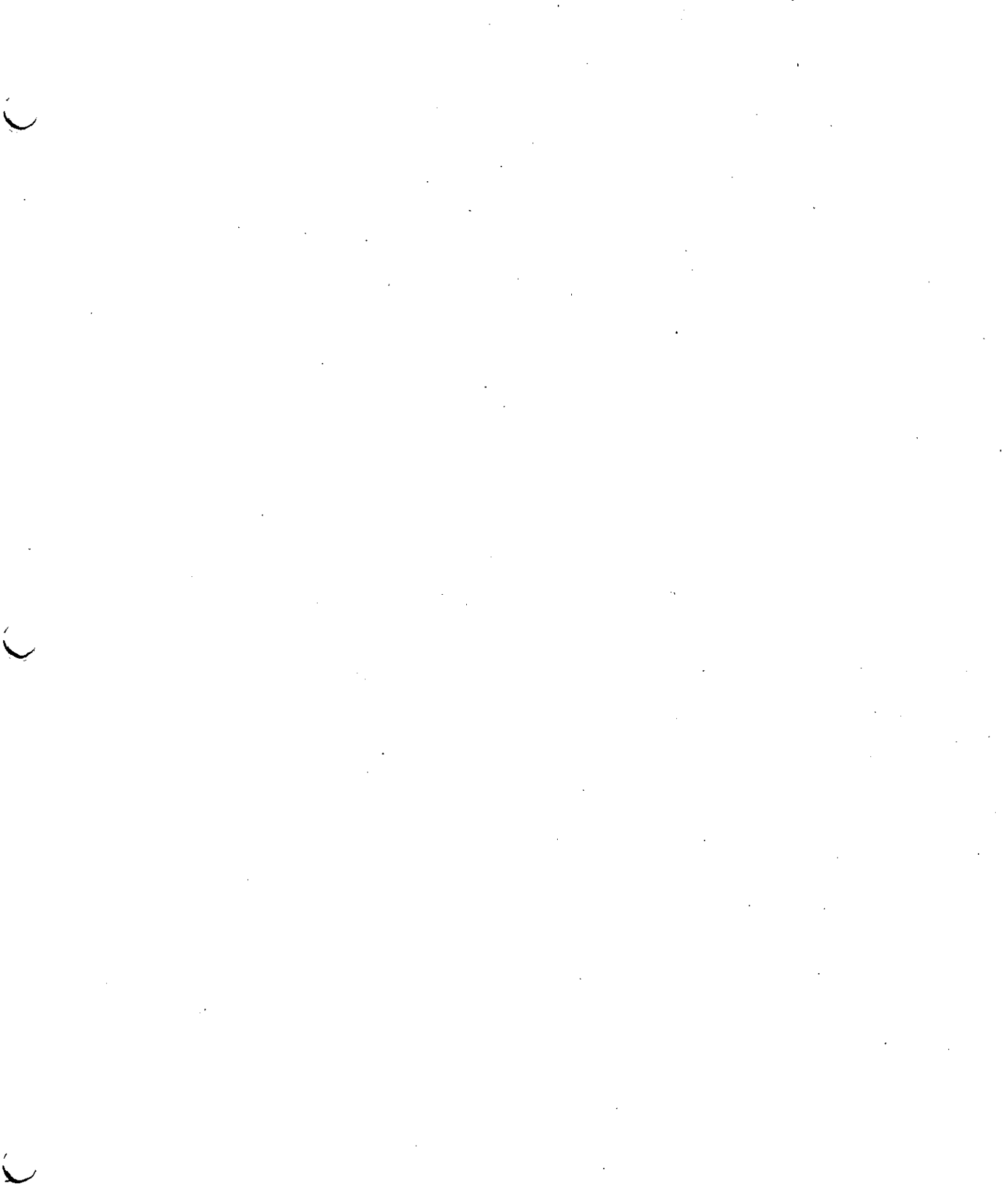
.2 the Act of March 3, 1911, ch. 210, 36 Stat. 1058, 1063.

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.

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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,

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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

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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

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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.

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- 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

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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

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§ 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.

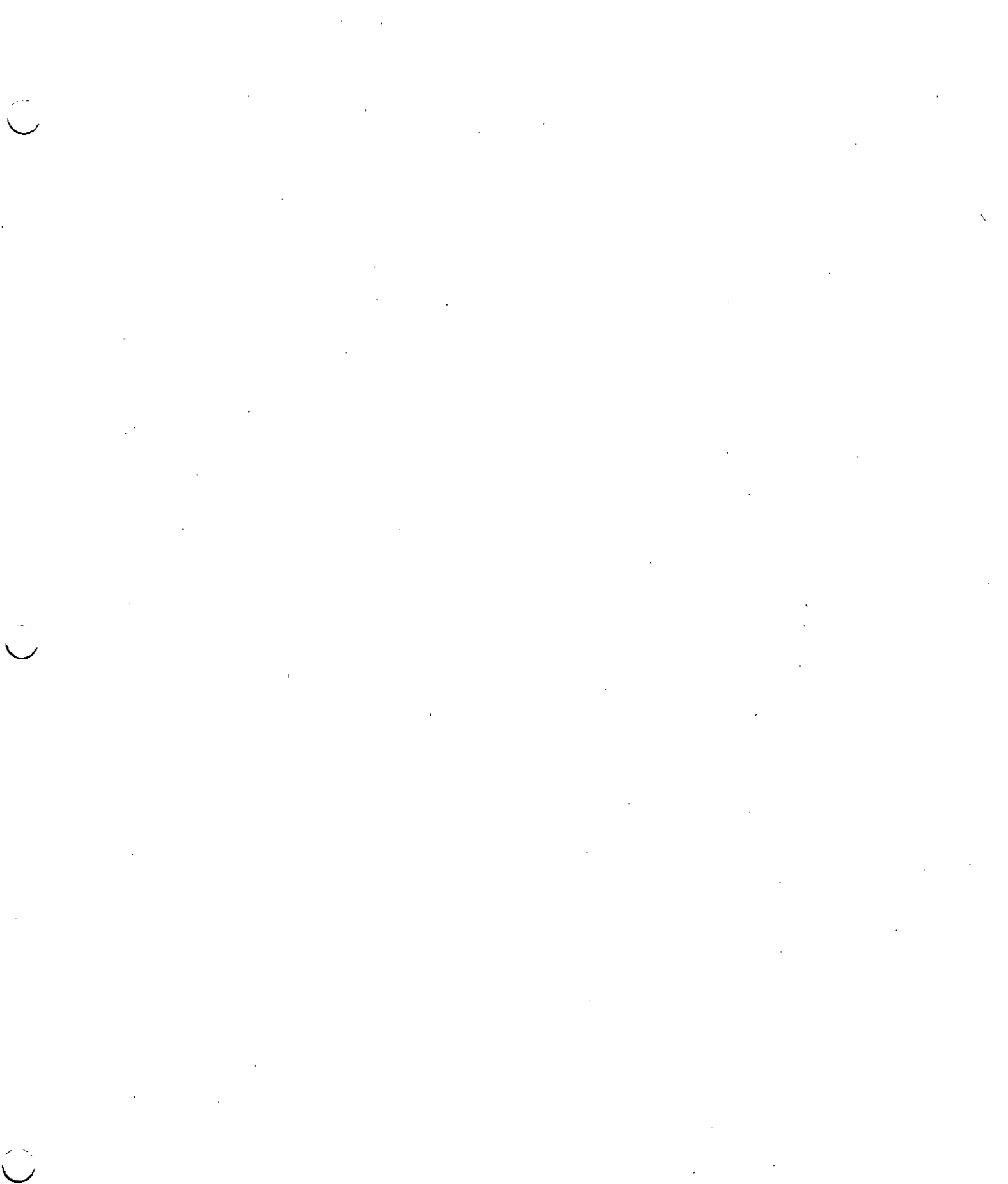
4.47 "Shoshone-Bannock Water Bank" means the Tribal water bank established pursuant to Idaho Code § 42-1761 to provide for rental of stored water outside the Reservation.

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).

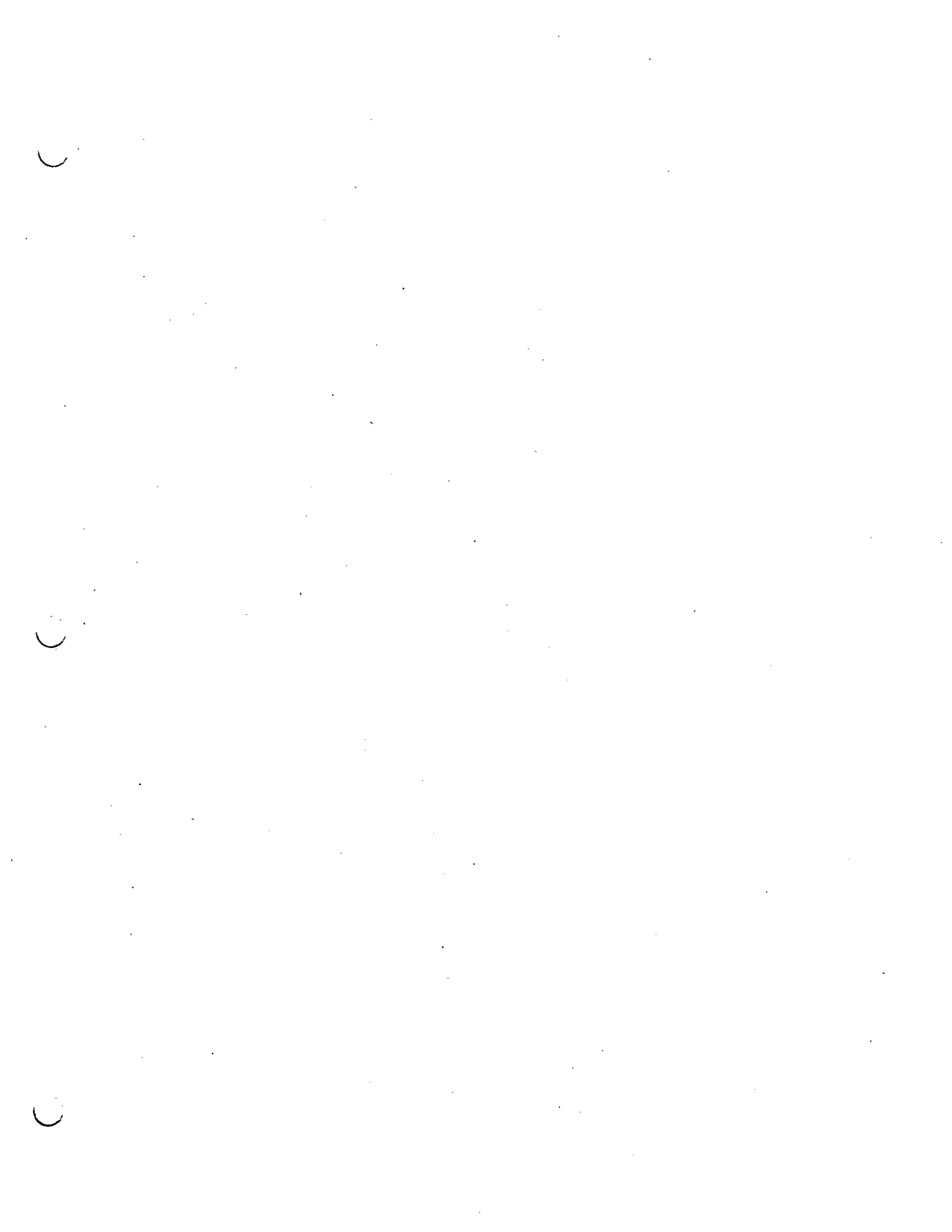
4.49 "Snake River Watermaster" means the Watermaster of Water District 01 or any successor.

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).

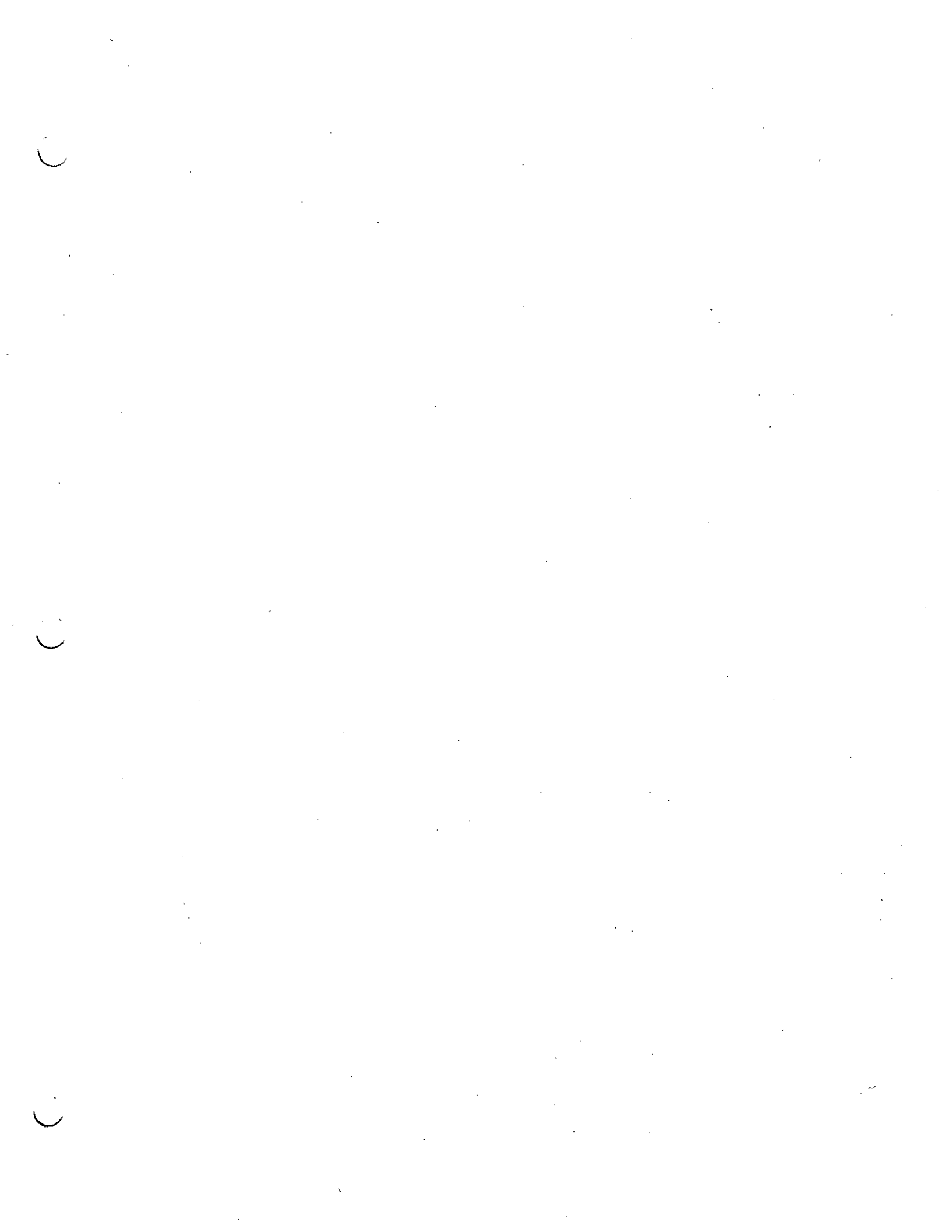
5.3 The Idaho Water Resource Board has authority to execute this Agreement pursuant to Idaho Code § 1734(3) (Supp. 1989) and Executive Order Nos. 85-9 and 87-9.

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.

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- .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

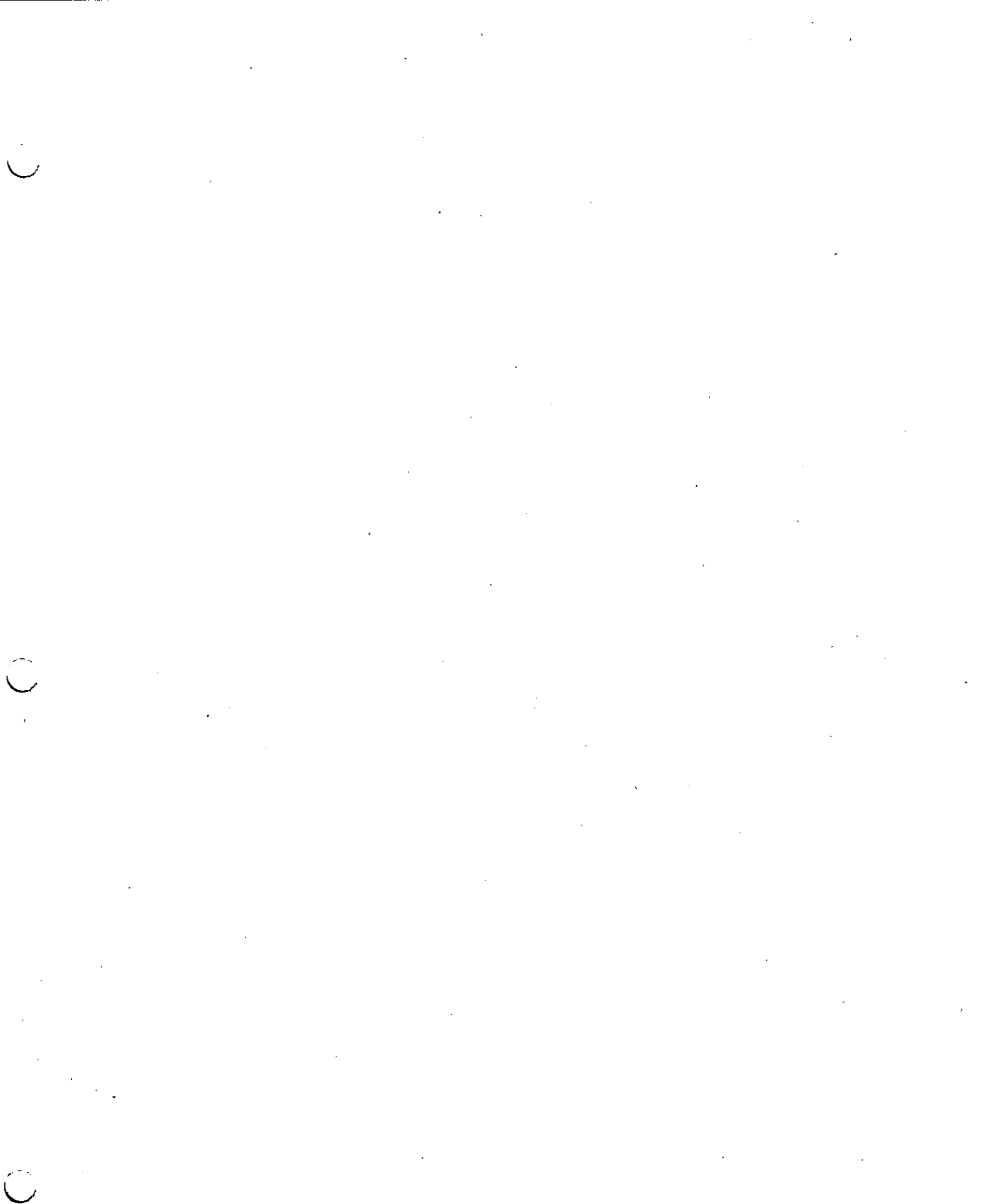
The parties agree that water supplied from the following sources shall constitute the Tribal water rights:

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

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Remarks:

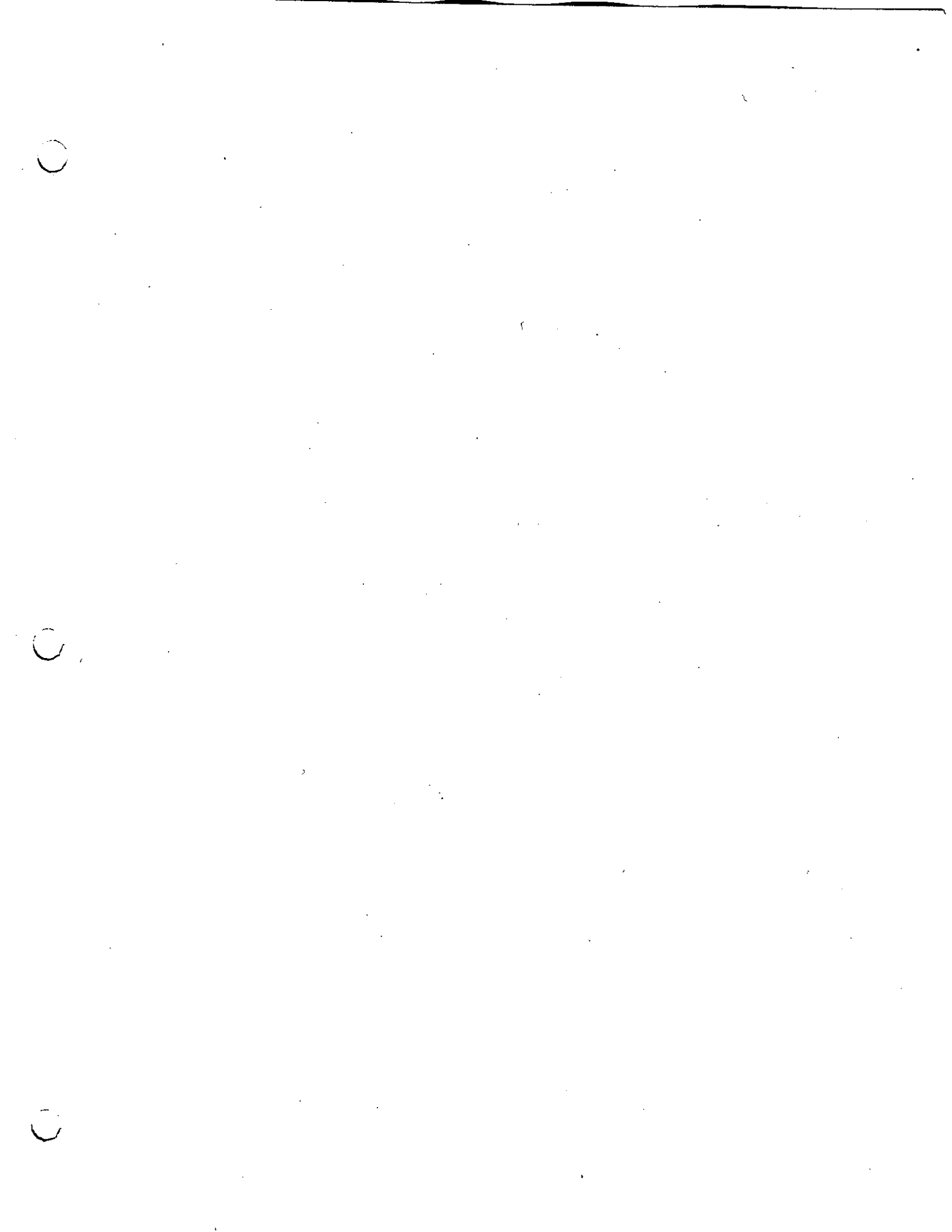
- .a The rate of diversion for this water right shall be measured at the head of the Reservation Canal located in SESWNE Sec 31 Twp 1N Rge 37E B.M.
- .b The volume of diversion for this water right shall be measured at the Drop located in SENWSE Sec 13 Twp 2S Rge 36E BM downstream from the point at which 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

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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

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- .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 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.
- .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

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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 BM
Future 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

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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:

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.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

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- .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

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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

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- .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

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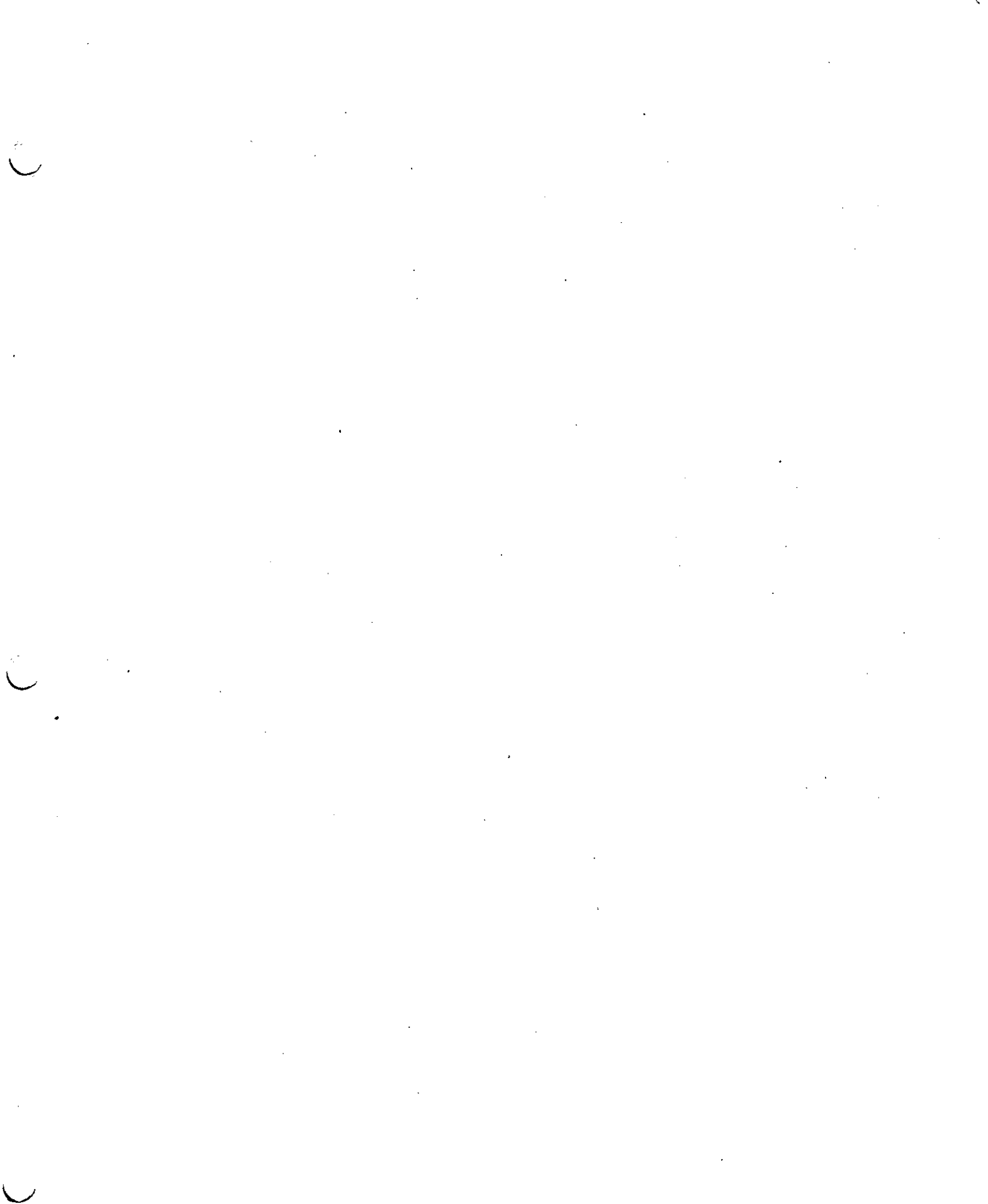
priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.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:

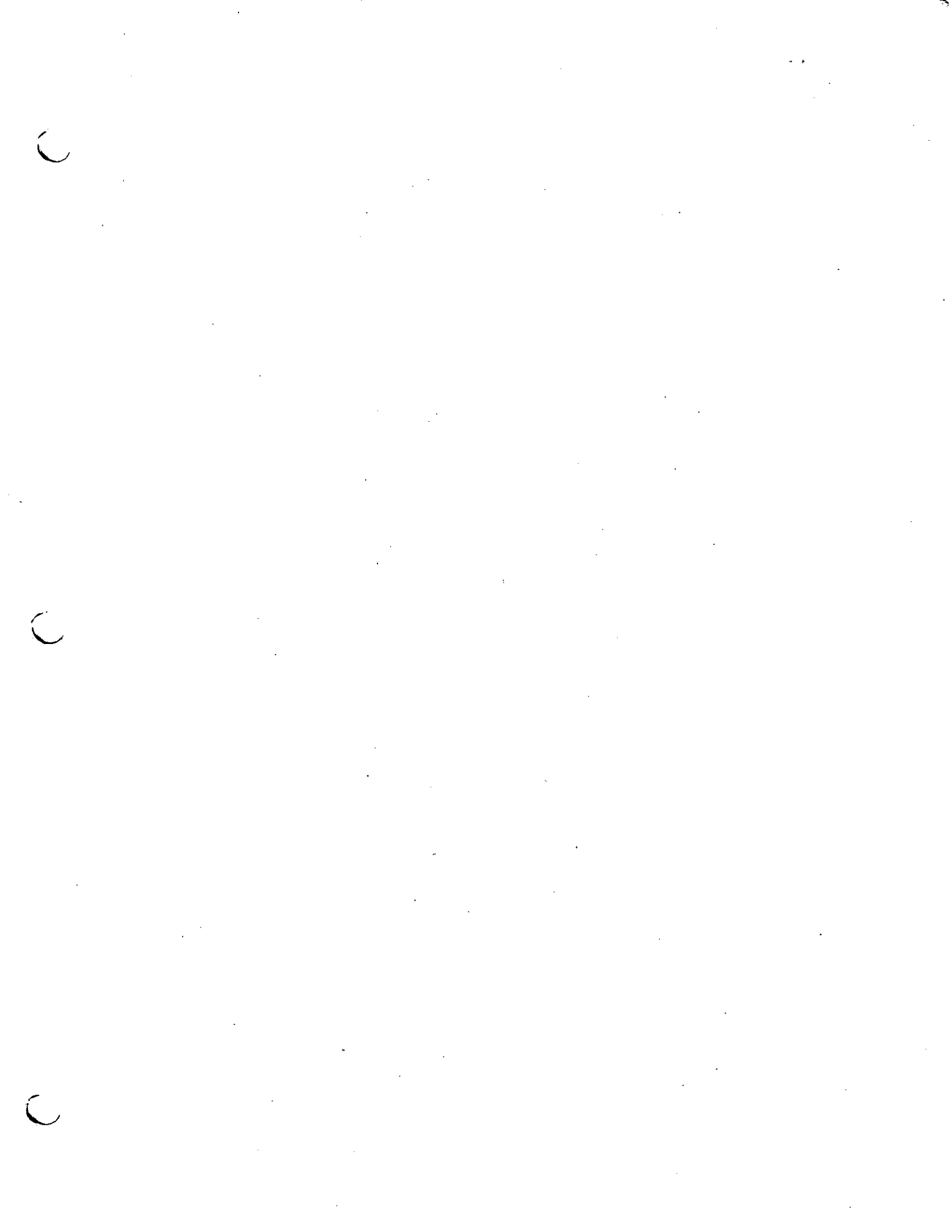


.11 Right No. 29-00473

- .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

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- .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

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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

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

.x Remarks:

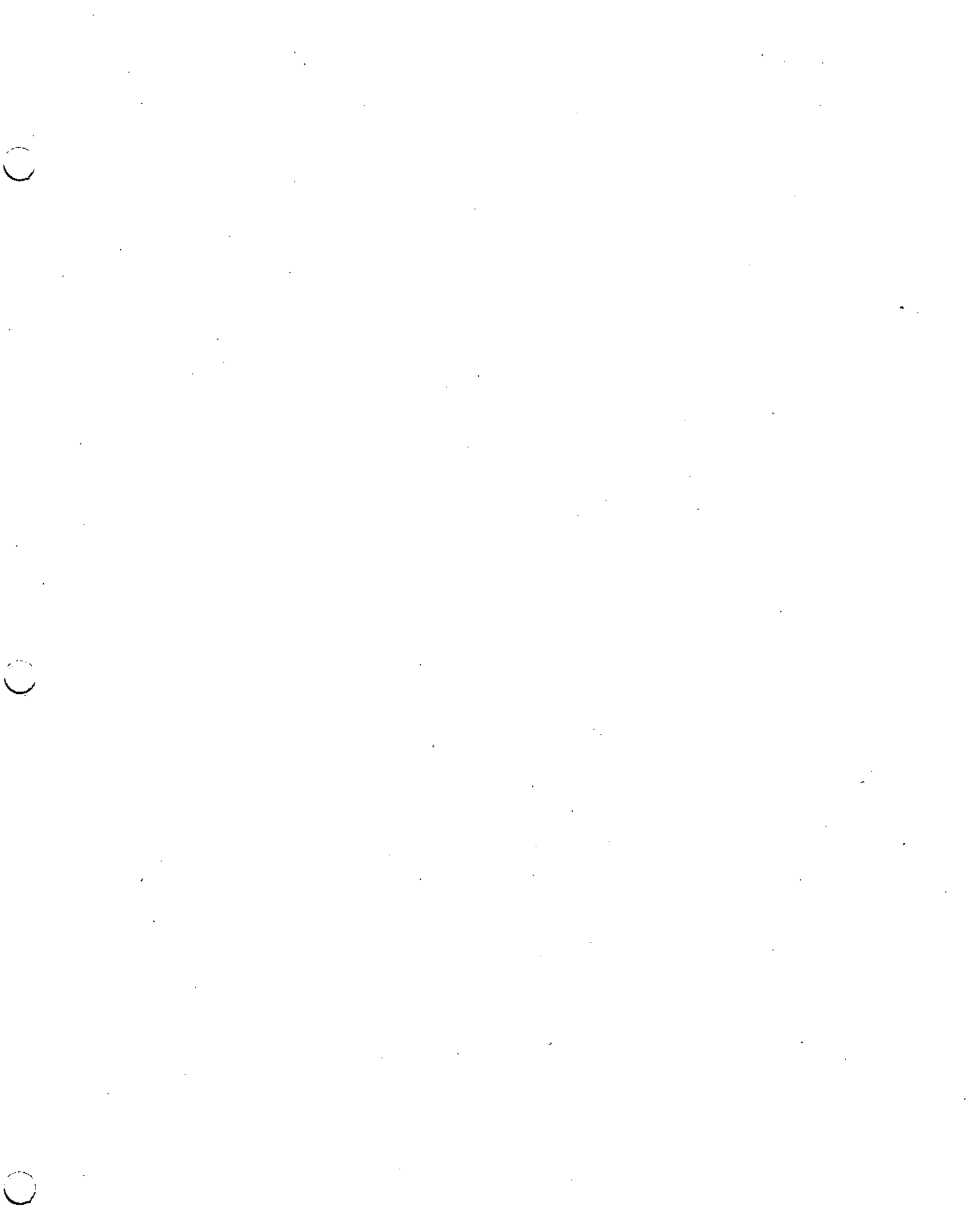
.16 Right No. 29-00238

- .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

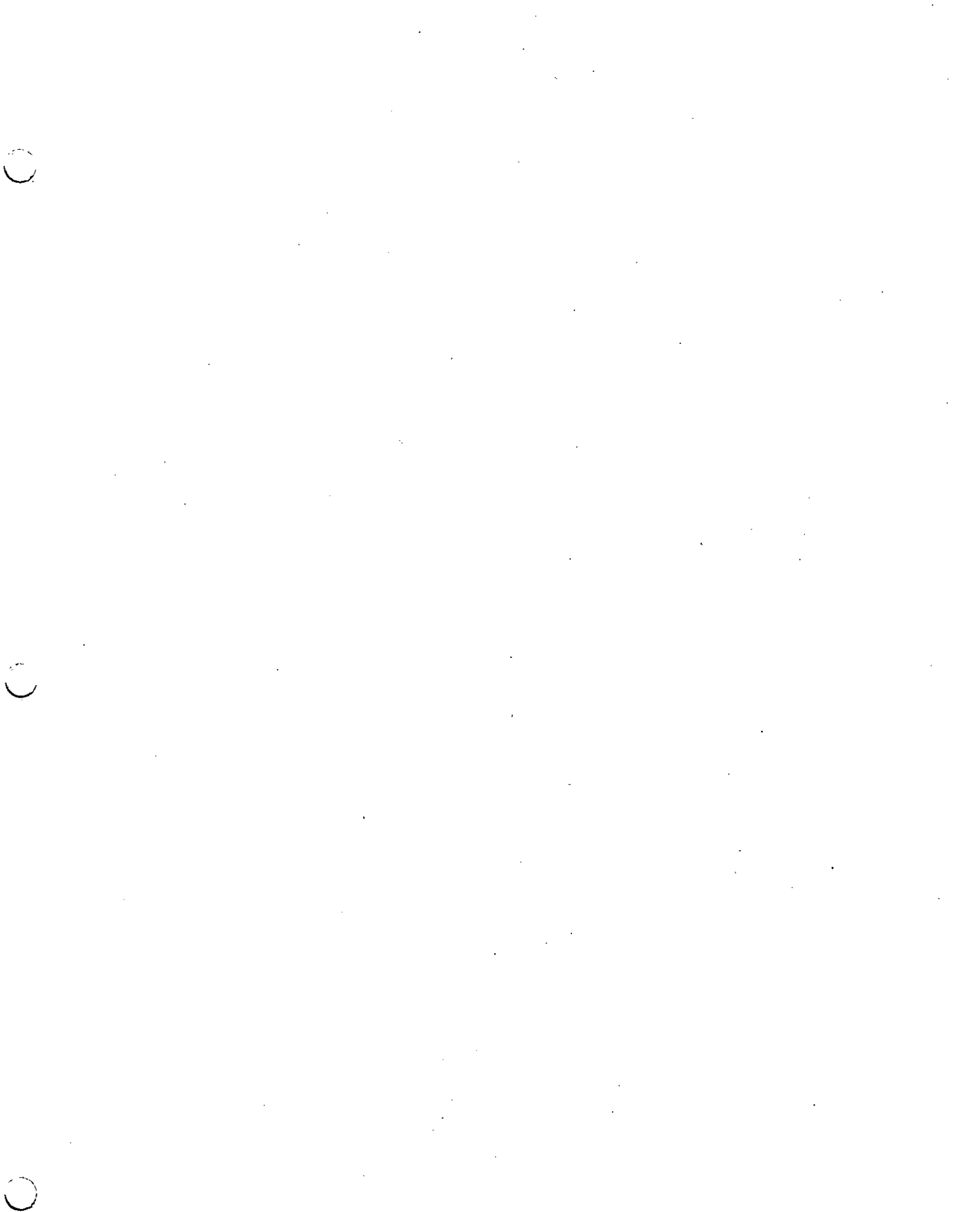
- .i Source: Mink Creek
- .ii Annual Diversion Volume: 104.3 AFY
- .iii Diversion Rate: 0.75 CFS
- .iv Annual Volume of Consumptive Use: 62.1 AFY



- .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

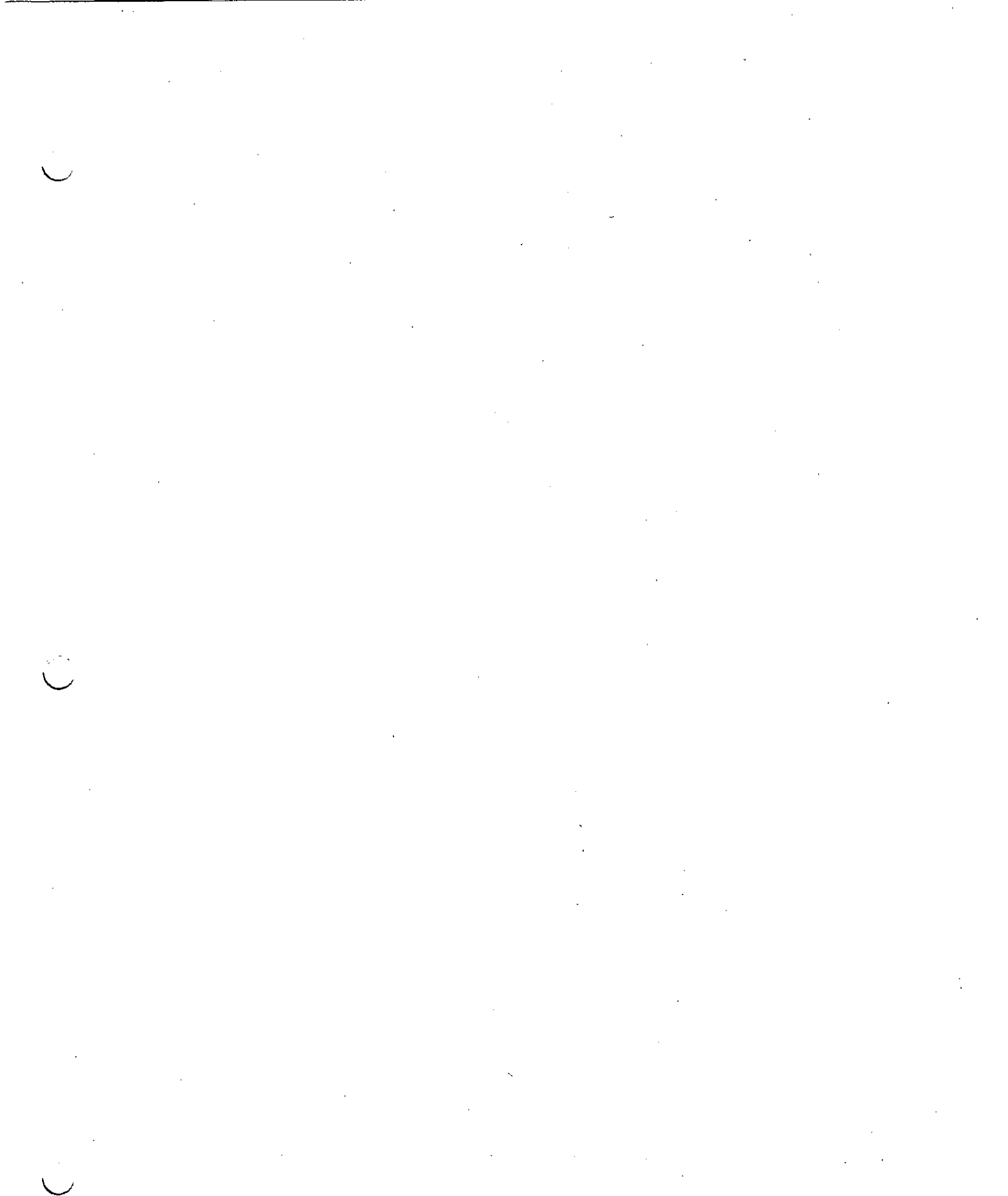
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satisfaction of this Winters right shall not exceed 150,000 AFY.

- .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

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- .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

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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

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- .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

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Remarks:

- .a The redirection 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.

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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

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.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.

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.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

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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:

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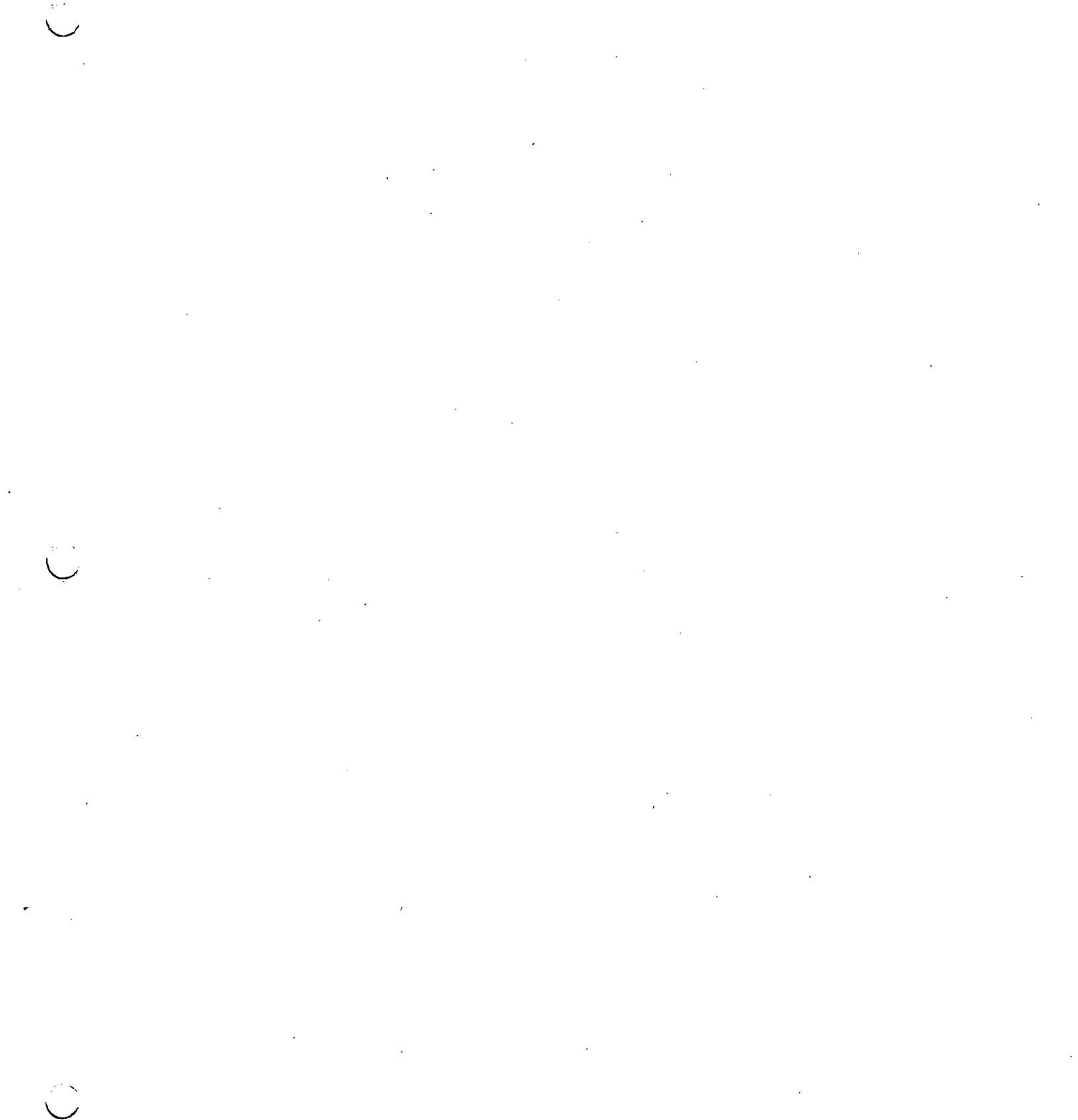
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.1 The United States holds in trust federal contract storage rights for water that accrues to two and eight thousand and fifty nine ten thousandths percent (2.8059%) of the storage space in American Falls Reservoir and six and nine thousand nine hundred 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.

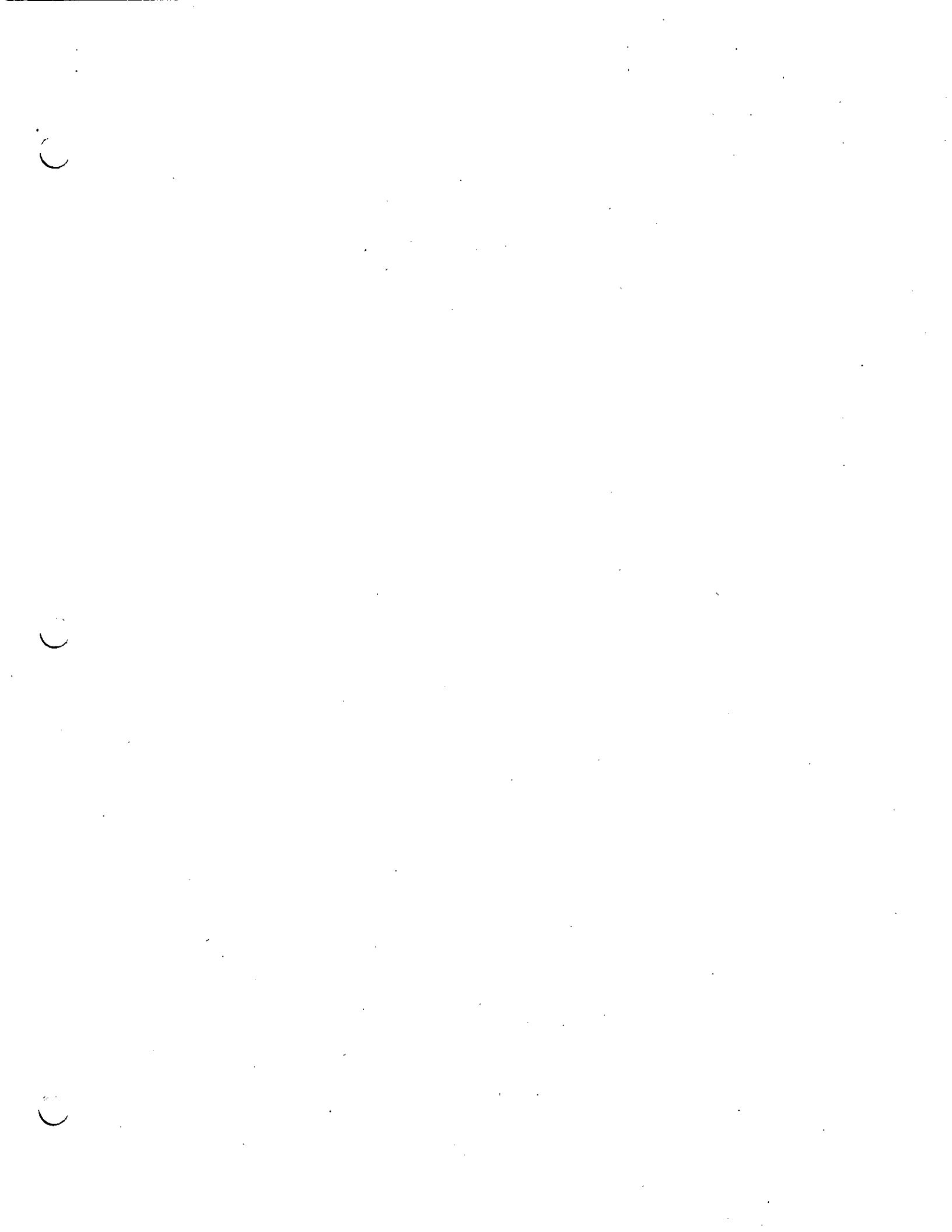
.4 The Tribes shall have the right to create a Shoshone-Bannock Water Bank pursuant to Idaho Code §§ 42-1761 through 42-1765 in order to rent as prescribed in Article 7 for any beneficial use outside the Reservation all or any part of the water accruing to the federal contract storage rights set forth 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

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.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

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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

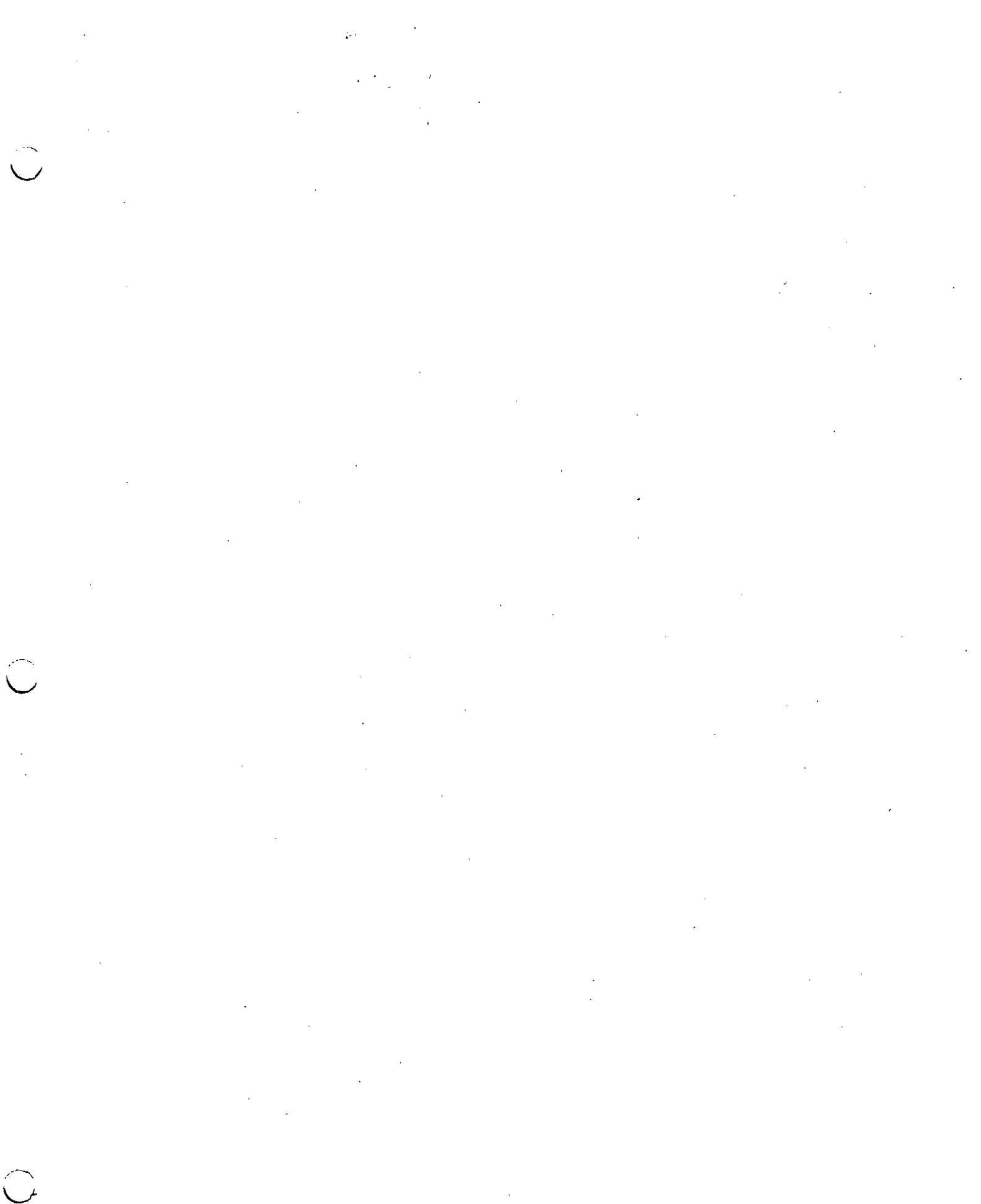
.i any forfeiture, abandonment, relinquishment, or other loss of all or any part of their federal contract storage rights, or

.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

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- .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 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, 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

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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

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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

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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

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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:

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- .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

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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:

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- .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

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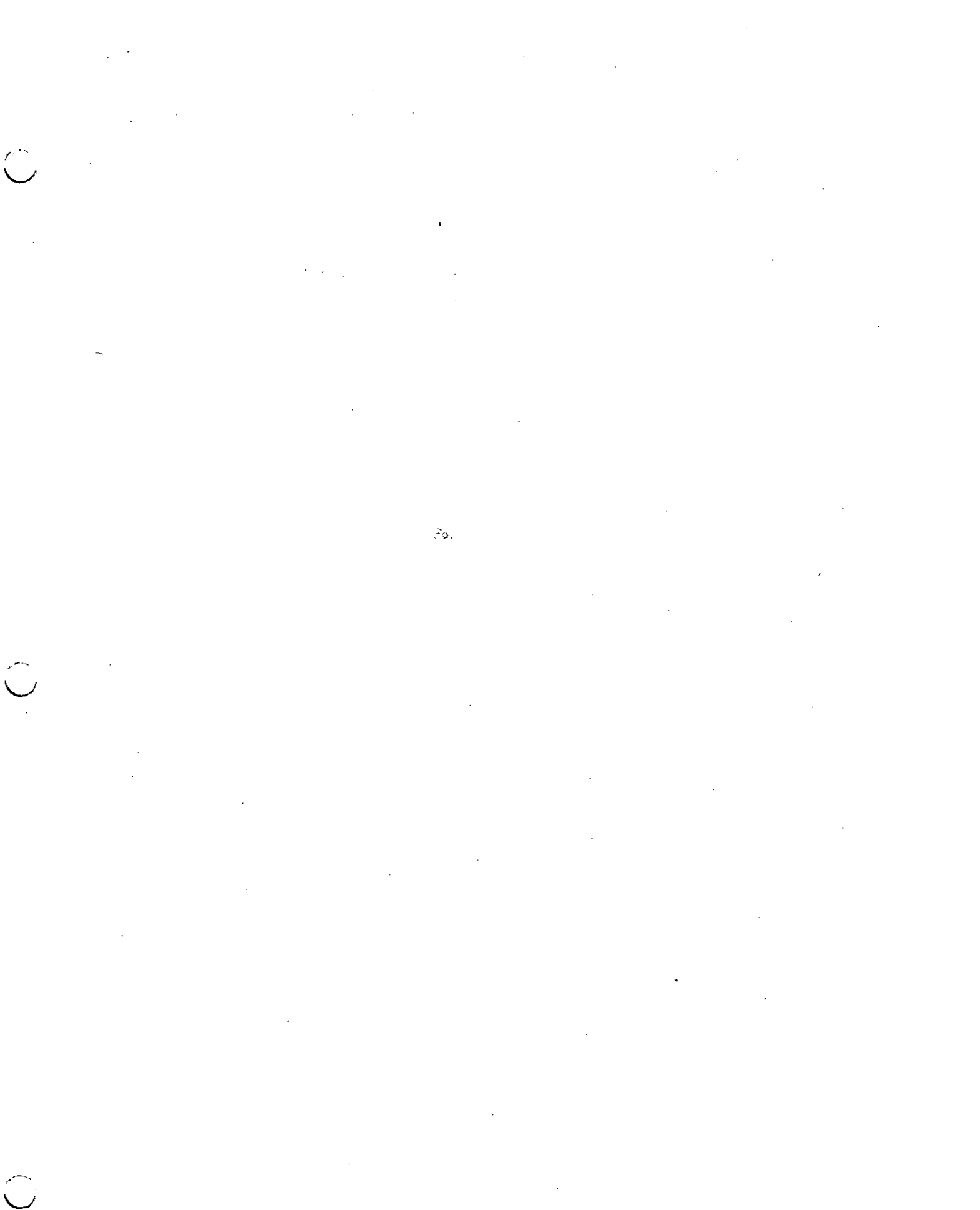
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shall be served on each member of the Intergovernmental Board at least thirty (30) days prior to the transfer, lease or new use.

.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.

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- 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:

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- .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;

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- .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;

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- .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.

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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

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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

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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

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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.

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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.

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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.

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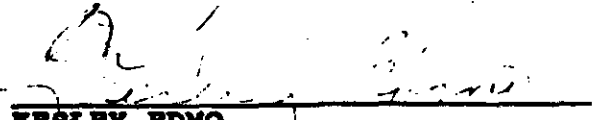
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The parties have executed this Agreement on the date following their respective signatures.


CECIL ANDRUS
Governor, State of Idaho

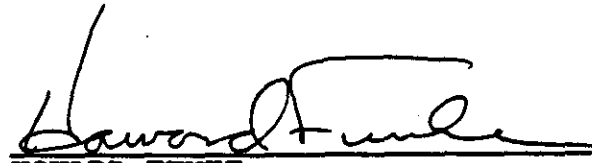
7-5-90
Date


KESLEY EDMO
Chairman, Shoshone-Bannock
Tribal Council

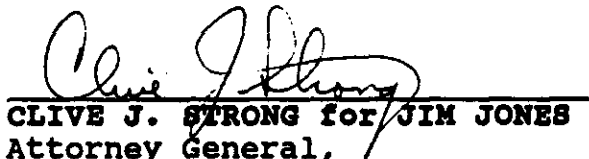
7/5/90
Date


GENE M. GRAY
Chairman,
Idaho Water Resource Board


7-5-90
Date


HOWARD FUNKE
Tribal Attorney
Shoshone-Bannock Tribes

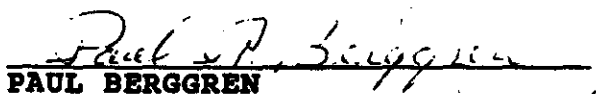
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CLIVE J. STRONG for JIM JONES
Attorney General,
State of Idaho

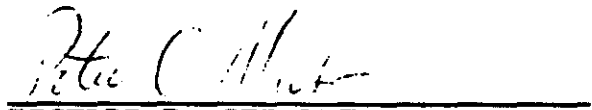
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EDDIE F. BROWN
Assistant Secretary for
Indian Affairs

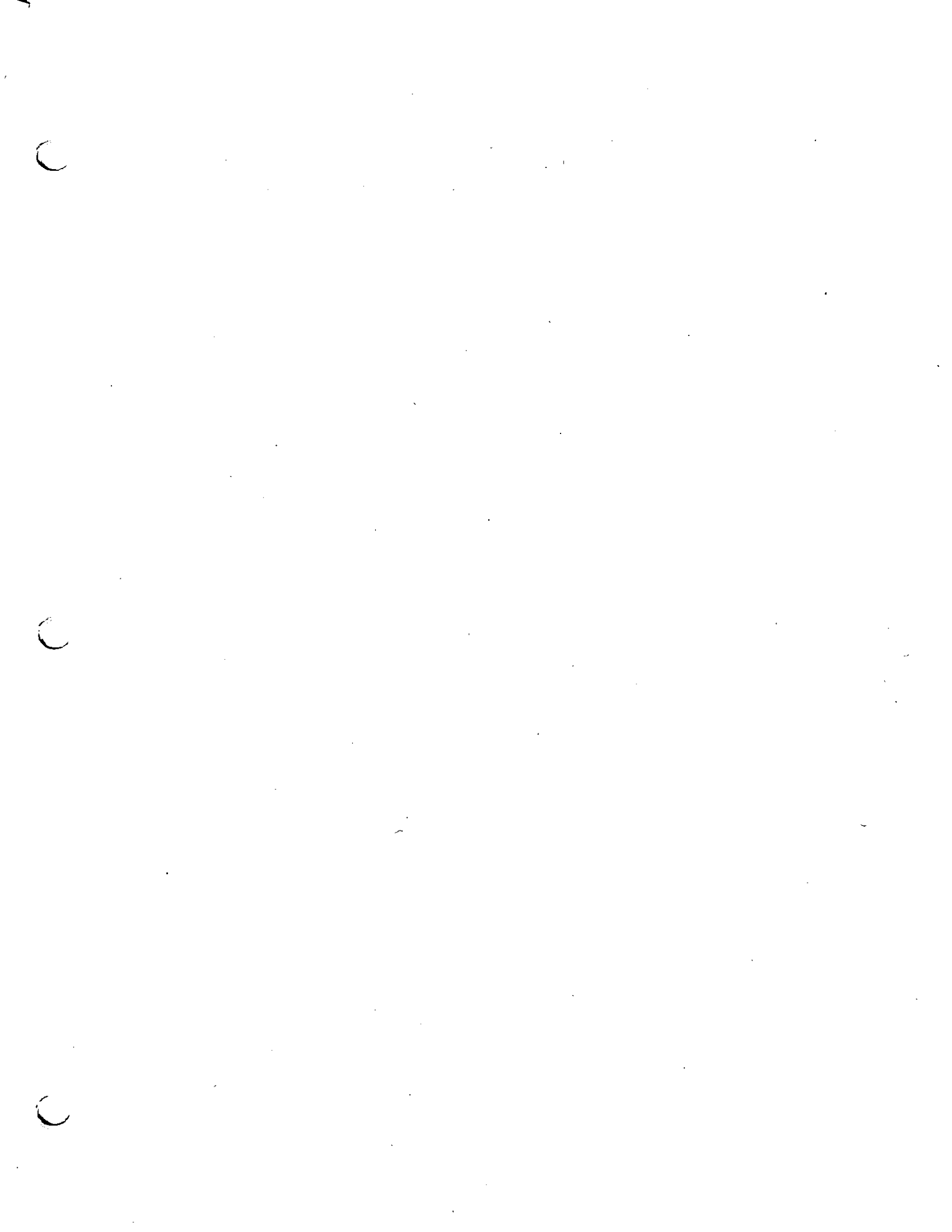
7-10-90
Date


PAUL BERGGREN
Chairman
Committee of Nine

7/9/90
Date


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

7/10/90
Date



BLACKFOOT RIVER WATER MANAGEMENT PLAN
STATEMENT OF PURPOSES
April 20, 1990

A Blackfoot River Water Management Plan shall be developed to assist in the implementation of The 1990 Fort Hall Water Rights Agreement as decreed in the SRBA. This Plan is proposed to encourage the open sharing of data and management resources to assist the effective management of the water resources in the Snake River Basin.

Nothing in the Plan nor in this Statement of Purposes shall be interpreted or implemented to change any portion of the decree in the SRBA.

The purposes of the Plan shall be as follows:

1. Determine the natural flow at each point of diversion on the Blackfoot River.
2. Determine the storage accumulation to Blackfoot Reservoir.
3. Determine the Blackfoot Reservoir storage used for 1) Tribal Lands; 2) non-Indian project lands; 3) instream flows; 4) natural losses and 5) operational losses.
4. Determine the storage accumulation to Grays Lake given any restrictions due to grazing leases.
5. Determine the Grays Lake storage used for 1) Tribal Lands; 2) non-Indian project lands; 3) instream flows; 4) natural losses and 5) operational losses.
6. Determine how gains to the Reservation Canal below the head and above the drop will be measured.
7. Determine when natural flow from the Blackfoot River and gains to the Reservation Canal are not sufficient to meet the Tribal water needs and calls for 1) Blackfoot Reservoir storage or 2) Reservation Canal diversions will be necessary.
8. Determine when water stored in Grays Lake will be moved to the Blackfoot Reservoir given any restrictions due to grazing leases.
9. Distribute Blackfoot River natural flow among the users by priority giving deference to the Tribe's protection of existing non-Indian non-project water users.
10. Deliver Blackfoot Reservoir and Grays Lake Storage to owners.
11. Define the computations that will be used to determine the amount of storage water that is exchanged as a result of the operational limitations of the Equalizing Reservoir to utilize Sand Creek as part of the Tribal water right.

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