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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA:

Case No. 39576

)
) Subcase No. 63-3618
)
)
) **MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT**
)
)

COMES NOW, the Boise Project Board of Control, New York Irrigation District, Wilder Irrigation District, Boise-Kuna Irrigation District, and Big Bend Irrigation District (hereinafter collectively referred to as "BPBOC"), by and through its attorneys of record, Barker, Rosholt & Simpson, LLP, and submits this *Motion for Partial Summary Judgment*, pursuant to Civil Rule 56(c). BPBOC moves this Court for an order of partial summary judgment that water right 63-3618 should include, as a beneficial use, "Irrigation from Storage" for all uncontracted storage space.

On November 20, 1953, the Department of Interior ("DOI") and the US Army Corps of Engineers ("COE") entered into a Memorandum of Agreement (the "1953 Agreement")

addressing, in part, the joint operations of Lucky Peak Reservoir along with the Anderson Ranch and Arrowrock Reservoirs (collectively referred to as the “upstream reservoirs”). Relevant to this motion, the 1953 Agreement allowed the storage waters of Lucky Peak to be used by the irrigation entities with contracted storage rights in the upstream reservoirs, whenever flood control operations prevented the filling of the upstream reservoirs. Subsequently, Supplemental Contracts, entered with each of the BPBOC irrigation entities having storage rights in the upstream reservoirs, recognized this same provision from the 1953 Agreement, in the form of a “guarantee.”

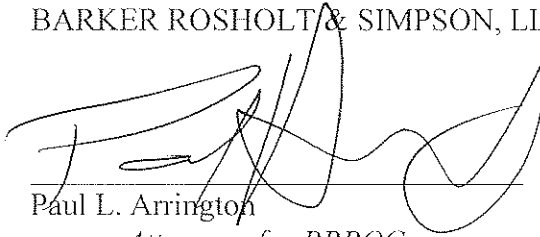
Notwithstanding these obligations, the recommendation for water right 63-3618 does not recognize Reclamation’s obligations to provide irrigation from storage pursuant to the terms of the 1953 Agreement and Supplemental Contracts. While the right does recommend irrigation from storage for 111,950 acre-feet, this represents storage space already under contract for irrigation to existing space holders. It is not appropriate to use this contracted space to provide water pursuant to the requirements of the 1953 Agreement and Supplemental Contracts, because, as this Court and the Supreme Court have recognized, the spaceholders and their patrons have an ownership interest in the water accruing to the contracted space. *United States v. Pioneer Irr. Dist*, 144 Idaho 106, 157 P.3d 600 (2007). Thus, the uncontracted space must have a water right to provide irrigation from storage for Reclamation to carry-out its obligation to the Arrowrock and Anderson Ranch spaceholders to provide water for irrigation purposes.

Since the language of the 1953 Agreement and the Supplemental Contracts is unambiguous, this Court should include “Irrigation from Storage” as an additional beneficial use for the uncontracted storage space in lucky Peak. This motion is supported a Memorandum in

Support of Motion for Partial Summary Judgment, and supporting affidavit, filed concurrently herewith.

Dated this 15th day of October, 2007.

BARKER ROSHOLT & SIMPSON, LLP



Paul L. Arrington
Attorneys for BPBOC

CERTIFICATE OF SERVICE

I certify that on October 15, 2007, I served a true and correct copy of the foregoing **MOTION FOR PARTIAL SUMMARY JUDGMENT** via first class mail, postage paid, and addressed as follows:

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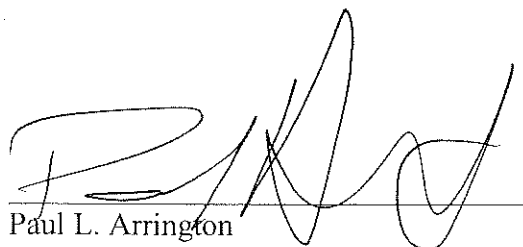
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