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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 Nos. 01-00217, 01-00218,
) 01-04024, and 01-04025
) (Minidoka Power Rights)

)
) Subcase Nos. 01-02068 and 01-04054
) (Palisades Power Rights)

)
) MEMORANDUM IN SUPPORT OF
) THE STATE OF IDAHO'S MOTION
) FOR PARTIAL SUMMARY
) JUDGMENT
)

The State of Idaho, by and through the undersigned deputy attorney general, hereby submits its *Memorandum in Support of the State of Idaho's Motion for Partial Summary Judgment* in the above-entitled subcases.

I. PROCEDURAL BACKGROUND

A. MINIDOKA POWER RIGHTS

On December 19, 2006, the Director of the Idaho Department of Water Resources (IDWR) recommended in the name of the United States Bureau of Reclamation (USBOR) water right nos. 01-00217, 01-00218, 01-04024, and 01-04025 for power purposes at the Minidoka Dam. The Director's Recommendations for those rights included the "historic practices hydropower remark" under the Priority Date section and the "winter power operation remark" under the Other Provisions Necessary section as follows:

Priority Date – "historic practices hydropower remark"

The appropriator shall exercise this right in a manner that recognizes the historic practice that the use of water for power generation is incidental to the rights of others to the use of water for other purposes. The appropriator shall not make a delivery call for hydropower generation except as against junior hydropower rights.

Other Provisions Necessary – "winter power operation remark"

The delivery of water to this right may be subject to the provisions for winter power operation at the Minidoka power plant as recognized in the Burley Irrigation Dist. v. Eagle, Supplemental Decree (Idaho 5th Jud. Dist., July 10, 1968) and Aberdeen-Springfield Canal Co. v. Eagle, Supplemental Decree (Idaho 7th Jud. Dist., March 12, 1969).

B. PALISADES POWER RIGHTS

On December 19, 2006, the IDWR Director recommended in the name of the USBOR water rights nos. 01-02068 and 01-04054 for power purposes at the Palisades Dam. The Director's Recommendations for those rights included the "historic practices hydropower remark" under the Priority Date section as follows:

Priority Date – "historic practices hydropower remark"

The appropriator shall exercise this right in a manner that recognizes the historic practice that the use of water for power generation is incidental to the rights of others to the use of water for other purposes. The appropriator shall not make a delivery call for hydropower

generation except as against junior hydropower rights.

II. REMARKS AT ISSUE IN MOTION FOR SUMMARY JUDGMENT

Along with other subcase issues, the “historic practices hydropower remark” and the “winter power operation remark” were the subject of two settlement conferences held on April 17, 2009 and June 26, 2009. The United States and the State of Idaho reached agreement on the hydropower remarks for the Minidoka and Palisades water rights, set forth in the motion.

This Memorandum is filed in support of the State of Idaho’s Motion for Partial Summary Judgment, which seeks an order substituting the remarks set forth below for the “historic practices hydropower remark” and the “winter power operation remark” included in the Director’s Recommendations for the Minidoka and Palisades power rights.

A. MINIDOKA POWER RIGHTS

The State of Idaho asserts that the following remarks should be substituted for the “historic practices hydropower remark” and the “winter power operation remark” set forth in the Director’s Recommendations for the Minidoka power rights:

i. Water Right Nos. 01-00217 and 01-00218

Priority Date

While the United States has the privilege to use 2,700 cfs for the development of power under water right nos. 01-00217 and 01-00218, it will be the objective of the United States in the operation of the Minidoka powerplant to limit the exercise of water right nos. 01-00217 and 01-00218 for power production at the Minidoka powerplant whenever operation of the Minidoka powerplant to the full extent of these water rights for power production would result in loss of water otherwise storable in the reservoir system. Accordingly, except as it is determined by the Secretary that additional water may be passed through Minidoka Dam without the loss of water that could be stored in the reservoir system, the United States will limit the release of water through the Minidoka Dam. To the extent that it is practicable to do so, the Watermaster and the Water District 1 Advisory Committee will be informed in advance of any plans for the release of water in excess of the foregoing limitation. “Reservoir system” shall mean all Federal reservoirs on the Snake River and its tributaries down to and including Lake Walcott.

Other Provisions Necessary

This decree does not alter, amend, or modify the contracts entered into between various federal contractors and the United States Bureau of Reclamation, as amended, in connection with the Palisades project and the Minidoka project, which contracts remain binding among the parties thereto.

ii. Water Right Nos. 01-04024 and 01-04025

Priority Date

This right may be exercised if it is determined by the Secretary that additional water may be passed through Minidoka Dam, in excess of that authorized under right nos. 01-00217 and 01-00218, without the loss of water that could be stored in the reservoir system. "Reservoir system" shall mean all Federal reservoirs on the Snake River and its tributaries down to and including Lake Walcott.

This right carries no entitlement to make a delivery call for hydropower generation except as against junior hydropower rights.

Other Provisions Necessary

This decree does not alter, amend, or modify the contracts entered into between various federal contractors and the United States Bureau of Reclamation, as amended, in connection with the Palisades project and the Minidoka project, which contracts remain binding among the parties thereto.

B. PALISADES POWER RIGHTS

The State of Idaho asserts that the following remarks should be substituted for the "historic practices hydropower remark" set forth in the Director's Recommendations for the Palisades power rights:

i. Water Right No. 01-02068

Priority Date

The United States, after consultation with the Watermaster and the Water District 1 Advisory Committee, may release stored water from Jackson Lake and Palisades reservoirs for the maintenance of power production at Palisades Dam powerplant and may store such water in American Falls Reservoir. The release of such water will be confined, however, when it appears to the Secretary that American Falls, Palisades, and Jackson Lake reservoirs will fail to fill, to not more than 1,000 cfs for minimum firm power production and that amount which can be stored in American Falls Reservoir; and no such release shall be made that

will preclude the later delivery of water, by exchange or otherwise, to the upper valley entities entitled thereto. "Upper valley entities" shall mean those reservoir spaceholders diverting from the Snake River and its tributaries above American Falls Dam.

Other Provisions Necessary

This decree does not alter, amend, or modify the contracts entered into between various federal contractors and the United States Bureau of Reclamation, as amended, in connection with the Palisades project and the Minidoka project, which contracts remain binding among the parties thereto.

ii. **Water Right No. 01-04054**

Priority Date

This right may be exercised if it is determined by the Secretary that additional water may be passed through Palisades Dam, in excess of that authorized under water right no. 01-02068, without the loss of water that could be stored in the reservoir system. "Reservoir system" shall mean all Federal reservoirs on the Snake River and its tributaries down to and including Lake Walcott.

Other Provisions Necessary

This decree does not alter, amend, or modify the contracts entered into between various federal contractors and the United States Bureau of Reclamation, as amended, in connection with the Palisades project and the Minidoka project, which contracts remain binding among the parties thereto.

III. FACTUAL BACKGROUND

On June 17, 1902, Congress passed the National Reclamation Act to promote the irrigation of arid and semi-arid public lands in the western states. Pub. L. No. 57-161, 32 Stat. 386 (1902). The act authorized the Secretary of the Interior to construct and maintain irrigation works for the storage, diversion, and development of waters for the reclamation of public lands and to withdraw from public entry the lands required for such irrigation works. *Id.*

In 1904, the Secretary approved the first reclamation project in Idaho—the Minidoka Project. See *Burley Irr. Dist. v. Ickes*, 116 F.2d 529, 532 (D.C. Cir. 1940), *cert. denied*, 312 U.S. 687 (1941). The two initial units of the Project consisted of a gravity division lying primarily on

the north side of the Snake River and a pumping division on the south side of the river. Water was delivered to the units by way of canals that diverted water from the Snake River at the Minidoka Dam. Completed in 1906, the dam was primarily a diversion dam that raised the waters of the river up to the level of the diversion canals, while also providing electric power for the Project. *Id.*

From the beginning, it was recognized that hydropower would be necessary for the pumping of water to the project lands lying above the level of the dam, chiefly in the south side pumping division. *Id.* Accordingly, the dam was originally constructed with ten penstocks to facilitate the powerplants needed to generate irrigation pumping power during the irrigation season: the first three generating units were installed at the Minidoka Dam in 1909, the fourth and fifth units were installed in 1911, a sixth unit was installed in 1927, and a seventh unit was installed in 1942.

In the winter months when power was not needed to serve the primary purpose of the project—i.e., irrigation—there was also a large amount of surplus power available. Pursuant to the so-called “Town Sites and Power Development Act of 1906”, Pub. L. No. 59-103, 34 Stat. 117 (1906), the Secretary was authorized to lease surplus power produced at reclamation projects, provided such leases did not “impair the efficiency of the irrigation project.” 34 Stat. 117, § 5. Accordingly, with the approval of the Secretary of Interior, the predecessor of the USBOR leased surplus power from the Minidoka powerplants to the project residents and adjacent towns.

Like the Minidoka Project, the Palisades Project was developed primarily to benefit irrigation, and in fact, it is operated in conjunction with the Minidoka Project reservoirs. The Palisades Dam and Reservoir reclamation project was authorized in 1949. Pub. L. No. 81-864,

64 Stat. 1083 (1949).¹ The project was to consist of a 1.4 million acre-feet reservoir (1.2 million acre-feet of active storage) that would provide supplemental storage supplies to 650,000 acres of land in the upper Snake River basin as well as provide flood-control protections. H.R. Doc. No. 81-720 (2d Sess. 1950) (Supplemental Report at 4). In addition, the Palisades dam was also to include a 112,500-kW powerhouse, intended to supply power to the City of Idaho Falls and to the Minidoka north side pumping division and the Michaud Flats project. H.R. Doc. No. 81-720 (2d Sess. 1950) (Supplemental Report at 4, 11).

Before construction of the Palisades project could be completed, Congress required that assurances be made with the Snake River water users to secure the winter water supply necessary to fulfill the project's purposes:

The continuation of construction of Palisades Dam beyond December 31, 1951, . . . is hereby made contingent on there being a finding by the Secretary . . . that contracts have been entered with various water users' organizations of the Upper Snake River Valley in Idaho that, in his opinion, will provide for an average annual savings of one hundred and thirty-five thousand acre-feet of winter water.

Pub. L. No. 81-864, § 4, 64 Stat. 1083 (1949). Ultimately, the USBOR obtained such assurances, and the Palisades dam was completed in 1957.

The mechanisms agreed upon to provide adequate winter water savings, included: (1) the elimination of winter diversions for stock and domestic use; (2) the coordinated operation of the USBOR's reservoir system on the upper Snake River; and (3) the limitation of the use of water for power generation at the Minidoka Dam in order to conserve additional water for storage in American Falls, Island Park, and Palisades reservoirs. These winter water savings mechanisms were memorialized as standard provisions in approximately 57 spaceholder contracts entered into between the Secretary of the Interior and various upper Snake River irrigation entities,

¹ The Palisades Project was originally authorized in 1941, however, funding and construction did not follow due to various obstructions that included the United States' involvement in World War II and a lack of assurances regarding the water supply for the project. *See* H.R. Doc. No. 81-720 (2d Sess. 1950) (Supplemental Report at 2).

commonly referred to as the “Palisades contracts.” The Palisades contracts, memorialized the “common plan for administering the operation of the Snake River” above Milner Dam. *See* Supplemental Decree, *Burley Irr. Dist. v. Eagle* (Idaho 5th Dist. Ct. July 10, 1968) and Supplemental Decree, *Aberdeen-Springfield Canal Co. v. Eagle* (Idaho 7th Dist. Ct. Mar. 12, 1969).

IV. STANDARD OF REVIEW

Summary judgment is proper when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). When an action will be tried before the court without a jury, resolution of the possible conflict between the inferences is within the responsibilities of the trial court as fact finder. *Chapin v. Linden*, 144 Idaho 393, 396, 162 P.3d 772, 775 (2007). In such an action, the trial judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment, but rather is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts, despite the possibility of conflicting inferences. *Id.*

V. ANALYSIS

A. INTRODUCTION.

As noted in the statement of facts, a comprehensive plan of operation was developed as part of the authorization of the Palisades Project. The State of Idaho seeks summary judgment on one distinct component of that comprehensive plan—namely that the exercise of the Minidoka and Palisades water rights at issue in these subcases for purposes of hydropower generation is limited to avoid impairment of the primary storage purpose of the federal reclamation reservoirs on the Snake River above Milner Dam. The limitations on the exercise of these water rights are set forth in the proposed remarks above.

While the State acknowledges that other components of the comprehensive plan of operation may need to be incorporated into the final decrees issued in these subcases, either directly or through a basin-wide issue, this fact does not preclude this Court from issuing an order resolving the objections and responses related to the “historic practices hydropower remark” and the “winter power operation remark” in these subcases.² The limitations on hydropower generation that the United States imposed on its water rights at the Minidoka and Palisades dams are separate and distinct from other components of the comprehensive plan for operation of the Upper Snake River federal reclamation projects.

B. THE PROPOSED LIMITING REMARKS ARE NECESSARY FOR THE DEFINITION, CLARIFICATION, AND ADMINISTRATION OF THESE WATER RIGHTS.

In order to continue administration as has occurred historically, it is necessary that the partial decrees for the water rights at issue in this proceeding include the proposed remarks set forth above. *See* Idaho Code § 42-1411(2)(j). Water District No. 1 is required by statute to administer water rights in accordance with the prior appropriation doctrine. Idaho Code § 42-602. Acting pursuant to that authority, the water district has administered the Minidoka and Palisades water rights in a fashion that recognizes that the exercise of those water rights for hydropower generation is limited when necessary to effectuate the greatest practicable conservation of water in the reclamation project reservoirs. *See Supplemental Director’s Report* (Apr. 10, 2008). The issuance of these water rights without the limiting remarks would fail to recognize historical administration within Water District No. 1 and could change the operation of the Upper Snake River Basin. *See id.* at 5–6. For these reasons, the inclusion of limiting remarks

² The State of Idaho by this motion does not seek to resolve issues related to the storage or natural flow water rights asserted for hydropower generation at the American Falls Dam. An order in response to this motion for summary judgment should expressly state that it is issued without prejudice to any matters relating to the water rights asserted for hydropower generation at the American Falls Dam. Likewise, the order should also expressly state that it does not prejudice any party’s rights to seek the inclusion of other components of the comprehensive plan for the operation of the Upper Snake River federal reclamation projects.

is necessary for the administration, clarification, and definition of the Minidoka and Palisades power rights.

C. THE PROPOSED REMARKS ARE SUPPORTED IN FACT AND LAW.

The proposed remarks at issue in this motion are consistent with the statutory provisions authorizing the Palisades Project and the Palisades contracts resulting therefrom.³ From the beginning, when the Palisades Project was first authorized in 1941, it was recognized that the success of the project would depend on local interests providing assurances that they would eliminate certain uses of water from the Snake River in order to conserve that which was necessary to provide the Palisades Reservoir with a reliable water supply. *See* H.R. Doc. No. 81-720 (2d Sess. 1950) (Supplemental Report at 2). By the time the project was reauthorized in 1949, certain local water users groups had passed resolutions giving assurances that their members would agree to water savings provisions, but no such contracts had been executed at that time. *Id.* As a result, the reauthorizing statute provided that the continuation of construction of the Palisades facilities was to be made contingent upon implementation of the necessary water savings contracts:

The continuation of construction of Palisades Dam beyond December 31, 1951, . . . is hereby made contingent on there being a finding by the Secretary . . . that contracts have been entered with various water users' organizations of the Upper Snake River Valley in Idaho that, in his opinion, will provide for an average annual savings of one hundred and thirty-five thousand acre-feet of winter water.

Pub. L. No. 81-864, § 4, 64 Stat. 1083 (1949); *see also* H.R. Doc. No. 81-720 (2d Sess. 1950) (Supplemental Report at 2-3).

Ultimately, mechanisms were agreed upon to provide the water savings necessary to

³ The State asserts that use of water for hydropower generation under water rights nos. 01-00217, 01-00218, 01-04024 and 01-04025 was limited prior to the Palisades Contract; however, for purposes of this argument only, the State relies on the authorization of the Palisades project and the accompanying contracts as support for the proposed remarks. The State reserves the right to submit pre-Palisades evidence in support of its position if the matter proceeds to trial.

satisfy the contingency set forth in the Palisades reauthorization statute, which included: (1) the elimination of winter diversions for stock and domestic use; (2) the coordinated operation of the USBOR's reservoir system on the upper Snake River; and (3) the limitation of the use of water for power generation at the Minidoka Dam in order to conserve additional water for storage in American Falls, Island Park, and Palisades reservoirs. The parties' mutual consent to these water savings mechanisms was memorialized in the Palisades contracts and the *Eagle Decrees* confirmed these provisions of the contract were binding on the parties. *See* Supplemental Decree, *Burley Irr. Dist. v. Eagle* (Idaho 5th Dist. Ct. July 10, 1968) and Supplemental Decree, *Aberdeen-Springfield Canal Co. v. Eagle* (Idaho 7th Dist. Ct. Mar. 12, 1969).

While the proposed decree remarks at issue in this motion are not identical to the language from the Palisades contracts, they do accurately describe those portions of the language that are necessary for the definition, clarification, and/or administration of these rights. *See* Idaho Code § 42-1411(2)(j); *see also supra* Section V.B. Water right decrees and contracts serve different purposes: A water right decree describes the nature and extent of the owner's right to the use of water from a particular water system, whereas a contract memorializes an agreed-upon exchange of promises and consideration between two or more parties. Not all of the commitments in the Palisades contracts relate to administration. Thus, it is neither appropriate or necessary to include the entirety of the contracts in the partial decrees for these water rights. Rather, all that is necessary for inclusion in the decrees is that which is set forth in the proposed remarks. The exclusion of other contract language from the decrees will not affect any parties' right under the contracts because the United States' obligations under those contracts (as amended) expressly remain in full force and effect pursuant to the remarks proposed:

Other Provisions Necessary

This decree does not alter, amend, or modify the contracts entered into between various federal contractors and the United States Bureau of Reclamation, as amended, in connection with the Palisades project and the Minidoka project, which contracts remain binding among the parties thereto.

The proposed remarks are not only consistent with the limitations as set forth in the Palisades contracts, they are also consistent with the historical relationship that existed between hydropower generation and irrigation storage at the Minidoka and Palisades facilities. In 1940, the Court of Appeals for the District of Columbia in *Burley Irr. Dist. v. Ickes*, 116 F.2d 529, 532 (D.C. Cir. 1940), *cert. denied*, 312 U.S. 687 (1941), succinctly described how power generation was tailored to ensure that it did not impair the primary irrigation purpose of the Minidoka Project:

The primary object of the statute, and of the project, is the reclamation of arid lands through irrigation. The production of power for pumping in connection with irrigation is an important incident to this main object. Disposition of surplus power, not required for pumping or other uses of irrigation, for commercial uses is authorized by an amendatory act of April 16, 1906, set forth below.⁴ *But the development and sale of such power is authorized only as an incidental phase of reclamation, not as a primary or independent end in itself. The statute and its amendments are reclamation acts, not commercial power development acts.* The legislation is entirely inconsistent with the development and sale of commercial power whenever that may interfere with the development of irrigation or “impair the efficiency of the irrigation project.” To assure that the secondary conservation of power will not impair the primary conservation of water for irrigation, the authority to dispose of surplus power is vested exclusively in the Secretary and is circumscribed by limitations upon the manner, terms and purpose of the disposal wholly inconsistent with permanent appropriation of power to non-irrigating uses and with subordinating irrigation to commercial sale.

Id. at 530–31 (emphasis added). The court went on to find that hydropower production at the Minidoka Dam was incidental to irrigation storage: “It would seem that the statute’s clear

⁴ “Whenever a development of power is necessary for the irrigation of lands, under any project undertaken under the said reclamation law, or an opportunity is afforded for the development of power under any such project, the Secretary of the Interior is authorized to lease for a period not exceeding ten years, giving preference to municipal purposes, any surplus power or power privilege, and the moneys derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived: Provided, That no lease shall be made of such surplus power or power privileges as will impair the efficiency of the irrigation project.” 34 Stat. 117, 43 U.S.C. § 522.

mandate would subordinate the commercial uses of power to those of irrigation in any case where the two uses might be in conflict” *Id.* at 541, n.15.

In authorizing the Palisades Project in 1949, Congress again recognized the need to limit power production so as to optimize storage of water in the reservoir system. The Palisades Project was authorized to be operated and maintained substantially in accordance with the June 1949 Supplemental Report approved and adopted by the Secretary of the Interior. *See* Pub. L. No. 81-864, 64 Stat. 1083 (1950). That Supplemental Report provided that Palisades power would be generated entirely incidental to the coordinated operation of the Upper Snake River reservoirs for irrigation storage purposes:

The production of power at Palisades Dam will be entirely incidental to the operation of the reservoir for irrigation and flood control. The production of firm power is possible only because a certain amount of water must be passed through the reservoir during the winter to fill the prior storage right of American Falls Reservoir.

H.R. Doc. No. 81-720 (2d Sess. 1950) (Supplemental Report at 10) (emphasis added); *see also* H.R. Doc. No. 81-720, at V (2d Sess. 1950) (Letter from Bureau of Budget to Sec’y of the Interior (July 17, 1950)) (“The report states that the production of power at the Palisades Dam will be entirely incidental to the operation of the reservoir for irrigation and flood control and that the production of firm power is possible only because a certain amount of water must be passed through the reservoir during the winter to fill the prior storage right of the American Falls Reservoir.”). Moreover, the Supplemental Report also contemplated the 1,000 cfs firm power releases from the Palisades Reservoir as set forth in the proposed remarks at issue in this motion:

In 1950, the BOR reported to Congress in a supplemental report concerning the future operation of Palisades Dam and Reservoir which became part of the authorizing legislation that the anticipated stream flow below the reservoir would be “an average daily flow of 1,000 second feet and a minimum of approximately 500 second feet would be provided below the dam as compared with the present minimum flow of 1,700 second feet.”

Upper Snake River Chapter of Trout Unlimited v. Hodel, 706 F.Supp. 737, 739 (D. Idaho 1989), *aff'd*, 921 F.2d 232, 235–36 (9th Cir. 1990) (“What does not change is the Bureau’s monitoring and control of the flow rate to ensure that the most practicable conservation of water is achieved in the Minidoka Irrigation Project.”).

D. IT IS NOT NECESSARY TO DETERMINE WHETHER OTHER PALISADES CONTRACT PROVISIONS SHOULD BE INCLUDED IN THE PARTIAL DECREES IN ORDER TO RESOLVE THE OBJECTIONS AND RESPONSES TO THE “HISTORIC PRACTICES HYDROPOWER REMARK” AND THE “WINTER POWER OPERATION REMARK.”

As noted above, other provisions of the Palisades contracts may need to be incorporated into the final decrees issued in these subcases, either directly or through a basin-wide issue. None of those contract provisions, however, are necessary for the definition, clarification, and/or administration of the hydropower aspects of these water rights. Moreover, the State’s motion does not preclude any party from moving for the inclusion of other provisions of the Palisades contract that they believe are necessary for the definition, clarification, and/or administration of other aspects of these water rights or other water rights.

The proposed remarks represent those limitations of the Palisades contracts that are necessary for the definition, clarification, and/or administration of the hydropower aspects of the Minidoka and Palisades power rights for purposes of water rights administration, and therefore, summary judgment resolving all objections and responses to the “historic practices hydropower remark” and the “winter power operation remark” should be granted.

E. IT IS NOT NECESSARY TO INCLUDE A REFERENCE TO ANY OTHER PROVISION OF THE *EAGLE DECREES* IN ORDER TO RESOLVE THE OBJECTIONS AND RESPONSES TO THE “HISTORIC PRACTICES HYDROPOWER REMARK” AND THE “WINTER POWER OPERATION REMARK”.

Nothing in the text of the *Eagle Decrees* themselves is necessary to resolve the objections and responses to the “historic practices hydropower remarks” and the “winter power operation

remarks” in the Minidoka and Palisades Power Right subcases.⁵ The proposed remarks represent those limitations referenced in the *Eagle Decrees* that are necessary for the definition, clarification, and/or administration of the hydropower aspects of the Minidoka and Palisades power rights, and therefore, summary judgment resolving all objections and responses to the “historic practices hydropower remark” and the “winter power operation remark” should be granted.

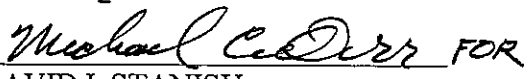
VI. CONCLUSION

The proposed remarks at issue in this motion accurately represent the historic exercise and administration of the Minidoka and Palisades water rights for generation of hydroelectric power as provided for through the statutory provisions authorizing the Palisades Project and the Palisades contracts resulting therefrom. Because the proposed remarks are necessary to continue the historic administration within Water District No. 1, summary judgment resolving all objections and responses to the “historic practices hydropower remark” and the “winter power operation remark” should be granted.

RESPECTFULLY SUBMITTED this 17th day of August 2009.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

 FOR
DAVID I. STANISH
Deputy Attorney General

⁵ The “text of the *Eagle Decrees*” means all portions of the decrees other than the Palisades Contract provisions attached as exhibits A through E. See Section V.C (discussing applicability of Palisades Contract provisions, including those attached to the *Eagle Decrees*).

CERTIFICATE OF SERVICE

I certify that on this 17th day of August 2009, I caused to be served the original and copies of the **MEMORANDUM IN SUPPORT OF THE STATE OF IDAHO'S MOTION FOR PARTIAL SUMMARY JUDGMENT** on the following persons by the methods indicated:

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BURLEY, ID 83318

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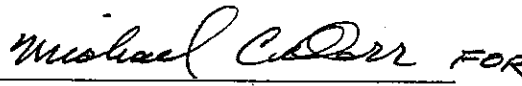
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DAVID I. STANISH
Deputy Attorney General