

JAN 27 2012

DEPARTMENT OF
WATER RESOURCESIN 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. 01-02064, 01-02064A,
) 01-02064B, 01-02064C, 01-02064D,
) 01-02064E, 01-02064F, 01-02064L,
) 01-10042, 01-10042A, 01-10042B,
) 01-10053A, and 01-10190
) (American Falls Subcases)
)

) Subcase Nos. 01-02068, 01-02068D,
) 01-02068E, 01-02068F, 01-02068M,
) 01-02068Y, 01-10043, 01-10043A,
) 01-10043E, 01-10191, and 01-10389
) (Palisades Subcases)
)

) **STIPULATION TO RESOLVE**
) **CERTAIN OBJECTIONS**
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)

The United States Bureau of Reclamation, the American Falls Spaceholders,¹ the Surface Water Coalition,² the Idaho Power Company, the Ground Water Districts,³ ~~the City of Pocatello,~~ and the State of Idaho (collectively, the "Parties"), by and through their counsel of record, hereby stipulate and agree as follows:

¹ Aberdeen Springfield Canal Company, Blackfoot Canal Company, Burgess Canal Company, Butte & Market Lake Canal Company, Corbett Slough Ditch Company, Dilts Irrigation Company, Enterprise Canal Company, Enterprise Irrigation District, Harrison Canal Company, Idaho Irrigation District, Lenroot Canal Company, New Sweden Irrigation District, Osgood Canal Company, Peoples Canal & Irrigation Company, Poplar, Progressive Irrigation District, Reid Canal Company, Rudy Irrigation Company, Snake River Valley Irrigation District, Trego Ditch Company, Fremont-Madison Irrigation District, and Woodville Canal Company.

² A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Falls Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

³ Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey-Valley Ground Water District, Jefferson Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District.

A. ISSUES RESOLVED

i. Quantity/Priority Date Elements

a. Winter Water Savings Remark

The winter water savings provisions of the Palisades Contracts provided for a certain amount of American Falls storage and Palisades storage to be filled prior to the remaining portion of the American Falls storage right.

1. Director's Recommendation

The Director recommended water right nos. 01-02064 and 01-02068 with the following "Winter Water Savings Remark" under the Other Provisions Necessary element:

Other Provisions Necessary

"A portion of this right is designated as the first to fill for the benefit of the contract holders as provided in the provisions for saving winter water 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)."

2. Resolution

The Parties agree the recommended Winter Water Savings Remark shall be deleted, and instead, the storage rights at American Falls and Palisades shall be split as follows:

<u>Right No.</u>	<u>Quantity (afa)</u>	<u>Priority</u>
01-02064	1,540,600	03/30/1921
01-10042	159,400	03/29/1921
01-02068	940,400	07/28/1939
01-10043	259,600	03/29/1921

b. Licensed Quantity Versus Active Storage Capacity at American Falls

The American Falls Reservoir was originally licensed for 1,700,000 acre feet under water right no. 01-02064. Since that time, the reservoir has been resurveyed to show that the reservoir currently stores 1,672,590 acre feet, which is referred to as the “Active Storage Capacity.”

1. Director’s Recommendation

The Director recommended water right no. 01-02064 for a quantity of 1,672,590 acre feet, which is consistent with the Active Storage Capacity. The recommendation included no remark or other reference to the licensed quantity of 1,700,000 acre feet.

2. Resolution

The parties agree the quantity on the face of the American Falls storage rights shall equal the licensed quantity:

<u>Right No.</u>	<u>Quantity (afa)</u>	<u>Priority</u>
01-02064	1,540,600	03/30/1921
01-10042	159,400	03/29/1921

However, the following remarks shall be included under the Quantity and Explanatory Materials elements of the rights, recognizing that the rights shall be administered pursuant to the then-existing Active Storage Capacity:

Quantity

“Right no. 01-2064 has been split into water right nos. 01-2064 and 01-10042.

The American Falls Reservoir was originally licensed for a total quantity of 1,700,000 acre-feet.

For purposes of administration, however, water right nos. 01-2064 and 01-10042 shall be limited to a total combined quantity equal to the active capacity of the water volume storable in American Falls Reservoir measured at an elevation of 4354.5 ft. on the face of American Falls Dam.”

Explanatory Materials

“Pursuant to the last survey conducted by the United States Bureau of Reclamation in 1977, the current Active Storage Capacity of the American Falls Reservoir was 1,672,590 acre feet (1,515,760 acre feet under water right no. 01-02064 and 156,830 acre feet under water right no. 01-10042).”

ii. Other Provisions Necessary Element

a. Ownership Remark — Irrigation Storage

The ownership relationship between the United States Bureau of Reclamation and the irrigation storage users was addressed in *United States v. Pioneer Irrigation District*, 144 Idaho 106, 157 P.3d 600 (2007).

1. Recommended Remark

The Director recommended water right nos. 01-02064 and 01-02068 in the name of the United States Bureau of Reclamation with the following “Ownership Remark” under the Other Provisions Necessary element:

“Although the name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree, the ownership of this water right is divided. The United States Bureau of Reclamation holds nominal legal title. Beneficial or equitable title to this water right is held in trust by the irrigation organizations, in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation

organizations, for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations pursuant to Idaho law. As a matter of law, this interest is appurtenant to the lands within the boundaries of or served by such irrigation organization. The ownership of this water right is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.”

2. Resolution

After the Director’s recommendations were filed, the Idaho Supreme Court addressed the ownership of irrigation storage in its decision in *United States v. Pioneer Irrigation District*, 144 Idaho 106, 157 P.3d 600 (2007). The Parties agree that the recommended ownership remark shall be deleted, and instead, the following remark, as set forth in *United States v. Pioneer Irrigation District*, shall be included under the Other Provisions Necessary element of the storage rights at American Falls and Palisades⁴:

“The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho constitutional and statutory law title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such

⁴ The new ownership remark would apply to 01-02064 and 01-02068 as well as to the split rights related to the resolution of the winter water savings remark, 01-10042 and 01-10043.

irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.”

3. Stay Of Competing Claims

The Parties agree that all subcases in the competing irrigation storage claims at American Falls and Palisades, including but not limited to the following, shall be stayed pending resolution of the City of Pocatello’s objections in the Palisades subcases:

American Falls

01-02064A	Twin Falls Canal Company
01-02064B	Milner Irrigation District
01-02064C	North Side Canal Company
01-02064D	Hillsdale Irrigation District
01-02064E	Falls Irrigation District
01-02064F	A & B Irrigation District
01-02064L	New Sweden Irrigation District
01-10042A	Twin Falls Canal Company
01-10053A	North Side Canal Company
01-10190	Minidoka Irrigation District

Palisades

01-02068D	Milner Irrigation District
01-02068E	Falls Irrigation District
01-02068F	A & B Irrigation District
01-02068M	New Sweden Irrigation District
01-02068Y	City of Pocatello
01-10191	Minidoka Irrigation District

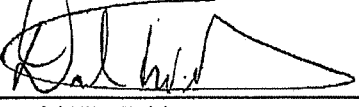
B. MUTUAL UNDERSTANDINGS

This stipulation applies to no SRBA subcase other than those listed herein. Nothing in this stipulation addresses, resolves, defines, narrows or otherwise has any effect on any issue in any SRBA subcase not listed herein or any remaining issues in these listed subcases.

Participation in the subcases listed herein and/or in this stipulation does not constitute a waiver, consent, ratification or estoppel concerning any right, position, recommendation, claim, response, objection or in any other subcase, each of which is to be litigated on its own merits notwithstanding any effect the outcome may have on the subcases listed herein

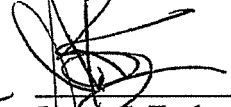
The Parties agree that this stipulation has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, without any determination on the merits. The Parties agree that nothing herein or resulting herefrom shall constitute an admission against interest or be used in any proceeding as legal support or precedent, except as to effectuate this specific stipulation. Each party stands by its claims, objections, and/or responses and intends merely to avoid litigation and to settle its peace.

U.S. BUREAU OF RECLAMATION



David W. Gehlert Date
Attorney for U.S. Bureau of Reclamation 10/19/12

IDAHO POWER COMPANY



James C. Tucker Date
Attorney for Idaho Power Company 11/9/12

STATE OF IDAHO

Michael C. Orr Date
Deputy Attorney General

GROUND WATER DISTRICTS

Candice M. McHugh Date
Attorney for Ground Water Districts

AMERICAN FALLS SPACEHOLDERS

Jerry R. Rigby Date
Attorney for American Falls Spaceholders

~~CITY OF POCA TELLO~~

~~_____
Josephine P. Beeman Date
Attorney for City of Pocatello~~

STIPULATION TO RESOLVE CERTAIN OBJECTIONS

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U.S. BUREAU OF RECLAMATION

IDAHO POWER COMPANY

David W. Gehlert Date
Attorney for U.S. Bureau of Reclamation

James C. Tucker Date
Attorney for Idaho Power Company

STATE OF IDAHO

GROUND WATER DISTRICTS

Michael C. Orr 1/20/2012
Michael C. Orr Date
Deputy Attorney General

Candice M. McHugh Date
Attorney for Ground Water Districts

AMERICAN FALLS SPACEHOLDERS

CITY OF POCA TELLO

Jerry R. Rigby 1-19-12
Jerry R. Rigby Date
Attorney for American Falls Spaceholders

Josephine P. Beeman Date
Attorney for City of Pocatello

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IDAHO POWER COMPANY

James C. Tucker
Attorney for Idaho Power Company

GROUND WATER DISTRICTS

Candice M. McHugh
Attorney for Ground Water Districts

CITY OF POCA TELLO

Josephine P. Beeman
Attorney for City of Pocatello

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IDAHO POWER COMPANY

James C. Tucker
Attorney for Idaho Power Company

GROUND WATER DISTRICTS

Candice M. McHugh 1-19-12
Candice M. McHugh Date
Attorney for Ground Water Districts

CITY OF POCA TELLO

~~Josephine P. Beeman~~ Date _____
~~Attorney for City of Pocatello~~

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CAPTIOL LAW GROUP PLLC

FLETCHER LAW OFFICE



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Milner Irrigation District, North Side Canal Company, and
Twin Falls Canal Company



Roger D. Ling 1/19/12
Date
Attorney for Falls Irrigation District

CERTIFICATE OF SERVICE

I certify that on this 26 day of January, 2012, I caused to be served the original and copies of the **STIPULATION TO RESOLVE CERTAIN OBJECTIONS** on the following persons by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

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2. Copies to:

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ABERDEEN AMERICAN FALLS GWD
BINGHAM GWD
BONNEVILLE JEFFERSON GWD
CAREY VALLEY GWD
IGWA INC
JEFFERSON CLARK GWD
MADISON GWD
MAGIC VALLEY GWD
NORTH SNAKE GWD

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UNITED STATES OF AMERICA
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- ☐ Statehouse Mail

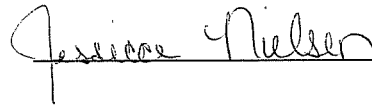
STATE OF IDAHO

Represented by:
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