

For the reasons explained below, the following issue, stated in conformation with Rule 16, AO1, as a Basin-Wide issue:

Does Idaho law require a remark authorizing storage rights to “refill” space vacated for flood control?

In certain on-going SRBA proceedings¹ on Basin 01 storage water rights in American Falls and Palisades reservoirs, the Bureau of Reclamation (“Reclamation”) and the State of Idaho have taken the position that a remark is “necessary” on those storage water rights for those reservoirs to administer water entering Reclamation reservoirs after water has been released from those reservoirs for flood control, or other operational mandates. While the parties disagree substantially on the form of remark, those parties nevertheless agree that some remark is required.

Of concern to the Petitioners, the State of Idaho has argued broadly that, 1) there can be no refill of any kind of storage rights unless there is a remark authorizing refill, and 2) that “Idaho law requires that storage ‘refill’ be subordinate to all existing and future water rights[.]”² The State’s argument is not limited to only the storage subcases at issue in that proceeding, but appears on its face to have broad applicability to all storage rights in all reservoirs in the State of Idaho.

Most of the storage water rights within the jurisdiction of the SRBA have already been issued partial decrees without any remark concerning refill, much less the remark urged by the State in the Basin 01 proceedings. The Basin 63 Boise River storage rights, and the Basin 65 Payette River storage rights have no such remark and have historically refilled to protect the spaceholders in priority, and the State’s position in the Basin 01 subcases may have an after the

¹ See attached Exhibit A for list of water right numbers.

² Memorandum in Support of State of Idaho’s Motion for Partial Summary Judgment (in Basin 01 Palisades and American Falls subcases), Feb. 21, 2012, p. 3.

fact adverse impact on those rights. Because a determination of this issue in the Basin 01 storage subcases could arguably apply to all storage water rights in all reservoir facilities throughout the State, and a determination of the issue in the Basin 01 subcases could call into doubt the administration and enforceability of storage water right holders “refill” rights throughout the state, then this matter should be designated a Basin Wide Issue so that all potentially affected parties may have notice and an opportunity to participate.

Early resolution of this issue through designation as a Basin Wide Issue will serve the purpose of judicial economy by ensuring an early and unified legal determination in the SRBA which can then be applied to individual storage water rights, even those which have already gone to partial decree. Without a Basin Wide Issue to resolve this matter prior to the SRBA’s entry of a Unified Partial Decree, then storage rights in other than American Falls and Palisades Reclamation facilities would be prejudiced.

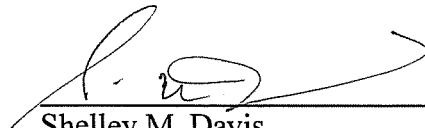
CONCLUSION

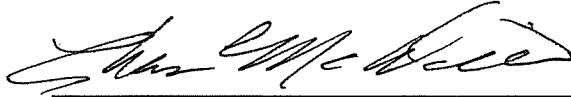
For all of the foregoing reasons, these Petitioners respectfully request that this Court designate as a Basin Wide Issue the issue of whether water rights for storage purposes in Bureau of Reclamation facilities must contain a remark concerning the ability to “refill” after water has been passed out of the system to satisfy flood control and other operational mandates of the Bureau of Reclamation.

Dated this 8 day of June, 2012.

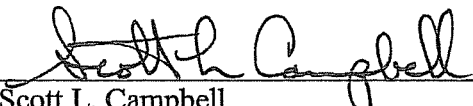
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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2012, I served a true and correct copy of the foregoing **PETITION TO DESIGNATE BASIN-WIDE ISSUE** on the person(s) listed below, by U.S. Mail, and electronic mail if available:

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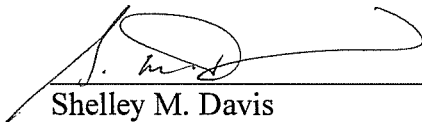

Shelley M. Davis

EXHIBIT A

American Falls Subcases:

01-2064

01-2064A

01-2064B

01-2064C

01-2064D

01-2064E

01-2064F

01-2064L

01-10042

01-10042A

01-10042B

01-10053A, and

01-10190

Palisades Subcases:

01-2068

01-2068D

01-2068E

01-2068F

01-2068M

01-2068Y

01-10043

01-10043A

01-10043E

01-10191

01-10389