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DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
JUN - 8 2012	
By _____	Clerk
_____	Deputy Clerk

**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. 01-2064, 01-2064A-F, and L,
) 01-10042, 01-10042A and B, 01-10053A,
) and 01-10190 (American Falls Subcases), and
) 01-2068, 01-2068D-F, M, and Y, 01-10043,
) 01-10043A and E, 01-10191, and 01-10389
) (Palisades Subcases)
)
) **MOTION FOR LEAVE TO FILE**
) **AMICUS BRIEF: STATE OF IDAHO'S**
) **MOTION CONCERNING "REFILL"**
) **OF BUREAU OF RECLAMATION**
) **STORAGE RIGHTS**
)
)
)

**MOTION FOR LEAVE TO FILE AMICUS BRIEF: STATE OF IDAHO'S
 MOTION CONCERNING "REFILL" OF BUREAU OF RECLAMATION
 STORAGE RIGHTS**

COMES NOW, Black Canyon Irrigation District, New York Irrigation District, Pioneer Irrigation District, Nampa-Meridian Irrigation District, and the Boise Project Board of Control, by and through their counsel of record, and hereby move this Court for an order permitting the filing of an Amicus Brief addressing the State of Idaho's Motion for Summary Judgment on the issue of whether a remark is necessary on storage water rights in Bureau of Reclamation reservoirs in the State of Idaho subordinating "refill" of reservoirs to all existing and future water rights. While this issue has only been raised in certain Basin 01 water right proceedings, the position of the state has the potential to affect already licensed and partially decreed storage rights in Bureau of Reclamation reservoirs throughout the State of Idaho. For this reason the above listed irrigation storage water right holders have a direct and substantial interest in the potential outcome of these proceedings, and believe it is necessary to submit the Amicus Brief, submitted simultaneously herewith, drawing this Court's attention to the potential state-wide implications of this Court's determination concerning the storage right "refill" issue in the above-listed subcases.

Furthermore, because of the potential implications that a determination regarding whether a remark is necessary on storage water rights in Bureau of Reclamation reservoirs in the State of Idaho has the potential to affect not only the Amici listed above, but all storage water right holders in the State of Idaho, the above Amici also submit herewith a Petition to Designate a Basin Wide Issue regarding this matter so that all storage water right holders in Bureau of Reclamation reservoirs in the State of Idaho may be provided notice and an opportunity to participate in the proceedings to determine this issue.

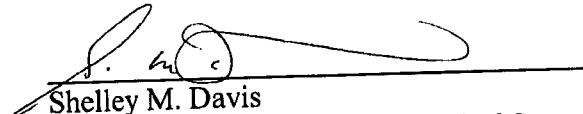
**MOTION FOR LEAVE TO FILE AMICUS BRIEF: STATE OF IDAHO'S
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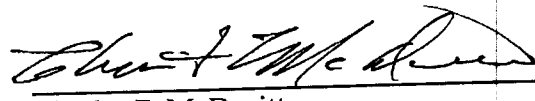
THEREFORE, Black Canyon Irrigation District, New York Irrigation District, Pioneer Irrigation District, Nampa-Meridian Irrigation District, and the Boise Project Board of Control, hereby request that this Court enter an Order permitting the filing of the Amicus Brief filed concurrently herewith.

Dated this 8² day of June, 2012.

BARKER ROSHOLT & SIMPSON LLP


Shelley M. Davis
Attorneys for Boise Project Board of Control

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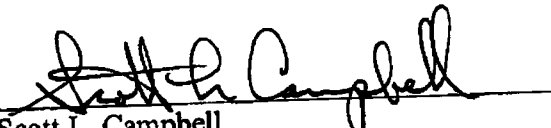
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STORAGE RIGHTS**

CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of June, 2012, I served a true and correct copy of the foregoing **Motion for Leave to File Amicus Brief: State of Idaho's Motion Concerning "Refill" of Bureau of Reclamation Storage Rights** on the person(s) listed below, by U.S. Mail, and electronic mail if available:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

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Pocatello, ID 83201

U.S. Department of Justice
Division of Env. & Natural Resources
550 W. Fort Street, MSC 033
Boise, ID 83706-1234

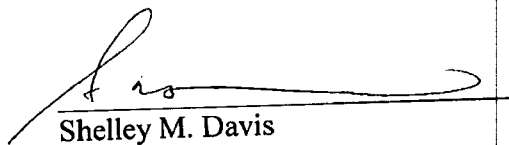
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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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) **BRIEF OF AMICUS CURIAE RE: STATE OF**
) **IDAHO'S MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT CONCERNING**
) **"REFILL" OF BUREAU OF RECLAMATION**
) **STORAGE RIGHTS**
)

INTRODUCTION

At the tail end of the SRBA, long after most rights have been partially decreed, the State of Idaho has raised a new position for the first time in the multi-decade history of the SRBA. This position, if applied as broadly as the State's memorandum appears to assert, would have

**BRIEF OF AMICUS CURIAE RE: STATE OF IDAHO'S MOTION FOR PARTIAL
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devastating consequences on all partially decreed storage rights in the state. The water delivery entities filing this Amicus Curiae Brief are the largest spaceholders of storage rights in the Boise and Payette Rivers. See *U.S. v. Pioneer Irrigation Dist.*, 144 Idaho 106, 157 P.3d 600 (2007). There the Supreme Court held that the irrigation spaceholders in the Boise River reservoirs held equitable title to the water rights on behalf of the irrigators and Reclamation held only bare legal title to these storage water rights. In the Boise and Payette, Amici would bear the brunt of the State's argument.

The State's proposal, as Amici understand it, is directed at all storage rights, whether held in the name of Reclamation, or otherwise. The State contends that there is no right to "refill" any storage space after the space fills on paper, even if the water was never actually stored in the first place and even if the release was made for reasons of flood control operations, unless there is a "remark" specifically authorizing "refill." The State takes its position one step further and asserts that the "remark" must subordinate "refill" of the space to all senior, junior, and even as yet unknown future rights.

There is a well established practice of dealing with flood control releases in the Boise and Payette Rivers. In the Boise, a Memorandum of Agreement ("MOA") has been entered between the Irrigation Entities, Reclamation, and the Corps of Engineers setting forth how the three Boise River Reservoirs would be jointly operated and how to deal with impacts to actual water availability due to flood control releases. IDWR and the State are aware of these agreements. Indeed, the water masters have been charged with accounting for these releases under the water control manuals and accounting programs.

In the Boise a "shoulder remark" was developed for existing Basin 63, part 2 and part 3

rights, which specifically recognized the importance of storage during the non-irrigation season.¹ That remark recognizes the flood control manual by name and limits diversions in the non-irrigation season to flood control releases, so that those persons whose rights contain the shoulder remark cannot call out storage after October 31 and before April 1. During this process of developing this remark, the State did not raise this “refill” issue, when it would have been logical to do so.

The State never raised the “need” for a “remark” authorizing “refill” for the Boise and Payette reservoirs when the water rights for these reservoirs were at issue. Hence, these water rights do not have remarks addressing refill, as the State now contends is an absolute necessity. One logical conclusion from the State’s position in these pending subcases for American Falls and Palisades is that the Boise and Payette reservoirs will have to let all that water that has been used to backfill after flood control releases, just run down the river, uncaptured, and such a consequence of the State’s assertions is here, unintended or not, would be devastating. If the State’s position is that its broad, sweeping pronouncements about what Idaho law does and does not provide relating to reservoir refill operations applies only to the American Falls and Palisades

¹ The shoulder remark reads:

“Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoirs dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

This language is taken from the partial decree water right 63-136, but it is substantially similar to language found in other Boise River natural flow rights.

subcases, it should say so, and explain how its position does not affect other partially decreed storage rights.

STATEMENT OF POSITION

The issue of “refill” was initially raised in these proceeding by the Bureau of Reclamation (hereinafter “Reclamation”). Reclamation objected to the American Falls and Palisades water rights and requested that a remark be inserted in the rights stating “[t]his water right includes the right to refill under the priority date of this water right to satisfy the Unites States’ storage contracts.”² No further proceedings were had on the issue of “refill” until the parties submitted their Statements of Remaining Issues on January 19, 2012. The State of Idaho, in its Statement of Remaining Issues posed the following question concerning the refill issue.

Under what circumstances may storage space in the American Falls and Palisades Reservoirs be ‘refilled,’ that is, under what circumstances may the cumulative quantities of water stored in the Reservoirs exceed the quantity elements of the storage water rights?³

While the State’s question is limited in scope to Reclamation’s storage rights in Palisades and American Falls reservoirs, the arguments advocated by the State to support its position that once a reservoir has technically filled once to its maximum capacity, regardless of whether the water is actually stored or released for flood control purposes, then the reservoir may nevertheless not “refill” in priority with the underlying storage right, could apply to any storage rights held by Reclamation in any reservoir in the State of Idaho. It is this troubling element of the State’s argument that Amici must bring to the Court’s attention.

² See SRBA backfile for American Falls and Palisades subcases, April 19, 2007 Standard Form 1 Objections submitted by USDI, Bureau of Reclamation.

³ See SRBA docket sheet for Palisades and American Falls subcases, Jan. 19, 2012 State of Idaho’s Statement of Remaining Issues, p. 2.

The Surface Water Coalition stated that “[a] remark should be added regarding Reclamation’s right to refill the storage under the same priority to satisfy spaceholder contracts.”⁴ The remark requested by Reclamation and the Surface Water Coalition is consistent with the historical practices concerning administration of American Falls and Palisades reservoirs, as well as the reservoirs on the Boise and Payette rivers, and is supported by the law of Idaho. Yet, in the other partially decreed subcases for the Boise and Payette river reservoirs, no one proposed a remark of any kind. Is a remark by extension “necessary” on all storage rights? Or are the Boise and Payette river decreed rights immune to the State’s position concerning “refill” in American Falls and Palisades reservoirs?

The State argues that any refill of Reclamation reservoirs must be made “subordinate to all existing and future rights,” and that failure to subordinate water entering the reservoir after an initial fill “would result in decreeing un-quantified, open-end rights to ‘excess’ water.” The State appears to confuse the concepts of “fill,” i.e. water temporarily entering a Reclamation facility, and actual storage for delivery under spaceholder accounts.⁵ The State fails to take into account the fact that Reclamation reservoirs are responsible for a myriad of obligations, including releasing flows for flood control. If water is released to fulfill those obligations, and no longer stored in the reservoir to satisfy irrigation spaceholder contracts, then water is not available for the spaceholders, unless additional water entering the Reclamation reservoirs can be used to fulfill the spaceholder contract and water rights. “Refill” in this context is simply continuing to

⁴ See SRBA docket sheet for Palisades and American Falls subcases, Jan. 19, 2012, Surface Water Coalition’s State of Issues/Proposed Trial Schedules.

⁵ See Memorandum in Support of State of Idaho’s Motion for Summary Judgment, p. 3.

provide actual water to meet irrigation spaceholder contractual obligations, and should not be subject to subordination “to all existing and future water rights.”⁶

“Refill” of Reclamation facilities in order to “refill” space emptied for flood control purposes does not “result in decreeing un-quantified, open-end rights to ‘excess’ water,” as the State argues. The amount of water that Reclamation’s storage water rights authorizes is a finite number, and may be refilled in priority of its water right, so that actual wet water can be put to use by the holder of equitable title to that water, rather than being passed downstream for non-irrigation purposes. Flood control releases are not beneficial uses. They are water management tools. Only when the storage water rights have actually been “filled” and stored to supply its primary purpose, should the right be considered filled in fact, rather than just on paper. As Reclamation notes, the State’s proposed remark “has the potential to penalize Reclamation when operational mandates require it to pass water rather than store it.”⁷ The State’s position would penalize not only Reclamation, but more directly harm the irrigation entities who hold equitable title to the water right, and the irrigators to whom they owe a trust obligation.

The Surface Water Coalition and the State both extensively briefed how accounting, “refill,” and storage rights have been treated in the Upper Snake, changed and modified over the years. Amici do not intend to offer argument concerning those operations. Indeed, the great detail that the parties have gone to suggests that there are some intensely factual issues at play in how flood control releases have been handled in that system. Those factual issues do not concern Amici. Indeed, the State concedes that the very term “refill” is subject to many different

⁶ In the Boise and Payette releases for irrigation purposes do count against the spaceholder’s storage rights. Amici do not propose changing this practice

⁷ See The United States’ Response in Partial Opposition to the State of Idaho’s Motion for Summary Judgment, p. 3.

interpretations.⁸ . Much of the State's argument hinges on the "zero flow at Milner" concept⁹, which is entirely inapplicable in the Boise and Payette.

However, the State asserts that Idaho law "requires" refill to be subordinated.¹⁰ Much of the support for this argument stems from the American Falls and Palisades water right files, not from Idaho law broadly applicable to all storage reservoirs. The state argues that allowing "refill" creates windfalls. To the contrary, not allowing the irrigation entities to "refill" space evacuated for flood control in priority harms the individual landowners whose livelihoods, farms, and businesses depend on that stored water. Of greatest concern is the idea asserted by the State that Idaho is a "one-fill only" state unless the water right authorizes a second fill. As explained herein, the Boise and Payette storage reservoirs operate under supervision of IDWR with the ability to "refill" space evacuated for flood control without such a remark in the permits, licenses, or water rights.

Submitted herewith are the affidavits of Rex Barrie, Watermaster for District 63 Boise river operations, and Ron Shurtleff, Watermaster for District 65 Payette river operations. In the Boise and Payette, all water that enters the reservoir accrues to the paper storage rights. When water is released from the reservoirs for flood control, those releases are not charged against the storage rights paper accounts. So, even though the reservoirs may not be actually full during flood control operations, the paper rights may be filled. Then as "new water" enters the system and actually fills the reservoirs, that new water has historically been available for use by the irrigation entities based upon the fact that their paper storage accounts have filled. This

⁸ See Memorandum in Support of State of Idaho's Motion for Partial Summary Judgment, p. 16.

⁹ *Id.*, p. 18.

¹⁰ *Id.*, pp. 19-29.

operation has taken place without the explicit authorization on the water right that the State now asserts is essential to operate in this manner.

As with the American Falls and Palisades water rights at issue in this proceeding, when Reclamation's water rights were decreed or licensed for the Boise and Payette river reservoirs¹¹, the State never sought an administrative provision that would limit refill of the reservoir to a one-time storage capacity or prevent "refill" after water had been released for flood control or other operational mandates. Not only did the State not seek any such provision in the licensing of those rights, it did not seek inclusion of any such remark in the SRBA partial decrees for these water rights. The partial decrees for Reclamation's Boise and Payette river storage rights have been issued without any remark, either authorizing or limiting refill of Reclamation facilities. The State's inconsistent position in these proceedings undermines its argument that Reclamation's storage rights in American Falls and Palisades requires a remark subordinating refill to all future and existing rights. Accepting the State's position in these proceedings puts in jeopardy the finality of all SRBA partial decrees already entered for Bureau storage water rights in all other Basins of the state.

CONCLUSION

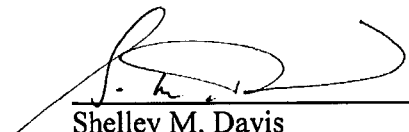
For the foregoing reasons, these Amici join with the Bureau of Reclamation and the Surface Water Coalition in opposing the inclusion of a remark subordinating water entering Bureau facilities after an initial paper fill to all existing and future water rights. Such a remark is not supported by the law or policy of the State of Idaho, nor is it supported by the historical administration of all Reclamation facilities in the State of Idaho.

¹¹ Both the Boise and Payette Rivers were previously adjudicated before the SRBA began. See *In re: General Adjudication for Snake River Basin*, 115 Idaho 1, 764 P.2d 78 (1988).

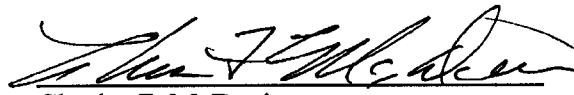
Based upon the State's contention that broad principles of general application to all storage rights in the State control the outcome of this case, Amici have submitted concurrently herewith a Petition to Designate Basin Wide Issue with the District Court, so that interested and impacted parties will have the chance to be heard on this issue of significance to their water rights. This Court should not act on the State's Motion for Partial Summary Judgment determining the "refill" issue until the District Court has acted on the Petition to Designate Basin Wide Issue.

Dated this 8 day of June, 2012.

BARKER ROSHOLT & SIMPSON LLP


Shelley M. Davis
Attorneys for Boise Project Board of Control

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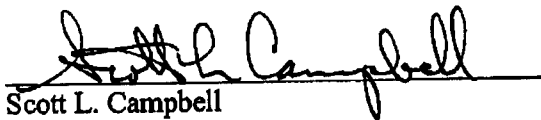
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Attorneys for Pioneer Irr. Dist.

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June, 2012, I served a true and correct copy of the foregoing BRIEF OF AMICUS CURIAE RE: STATE OF IDAHO'S MOTION FOR PARTIAL SUMMARY JUDGMENT CONCERNING "REFILL" OF BUREAU OF RECLAMATION STORAGE RIGHTS on the person(s) listed below, by U.S. Mail, and electronic mail if available:

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) 01-10043A and E, 01-10191, and 01-10389
) (Palisades Subcases)

) **AFFIDAVIT OF REX BARRIE, BASIN 63**
) **WATERMASTER**
)
)
)
)
)

STATE OF IDAHO)
) ss.
County of Ada)

REX BARRIE, being first duly sworn upon oath, deposes and states as follows:

AFFIDAVIT OF REX BARRIE, BASIN 63 WATERMASTER

appointed by the Director, Idaho Department of Water Resources to administer Basin 63 water rights. I have been the Basin 63 Watermaster since 2008. I am responsible for administering the water rights on the Boise River. One of my responsibilities includes coordinating with the Bureau of Reclamation and Army Corps of Engineers on reservoir operation on the Boise River including making determinations concerning flood control releases and reservoir fill and release to fulfill the contractual obligations to irrigation spaceholders in the reservoirs.

2. The determinations concerning when a reservoir is filled, how the reservoir is refilled, and the impact that flood control releases have upon storage space in the system is governed by the Water Control Manual for Boise River Reservoirs.

3. In the manual detailed procedures are outlined that dictate when waters are released for flood control, the timing of those releases, the volume of the releases, and how and when refill of the system occurs.

4. At Section 7-2 the Boise River Operation Manual sets forth the general policy concerning flood control releases and refill procedures. It states:

The amount of water stored in the system and precisely when it is stored is dependent on water rights, the amount of water available as runoff, the timing of the runoff, and the required flood control regulation. Flood control regulation during this period (1 November through the spring high water period) endeavors to maintain adequate flood control spaces within the reservoirs and yet refill the reservoirs without exceeding 6,500 cfs as measured at the Glenwood Bridge gaging station. In low runoff years, flood control regulation during the spring snowmelt period is normally limited or not necessary, and water conservation and reservoir refill are the primary objectives. Runoff years near normal require delicate balances between flood control and refill regulation, with runoff timing and volume forecasts as the key factors for the balances. In large runoff years, maintaining adequate flood control space within the reservoirs and passing excess water through the system without unduly jeopardizing system refill, are the primary objectives.

5. Water entering the reservoir system is counted toward the paper fill of the reservoir.

However, water then passed through the system in order to maintain adequate flood control is not

deducted from the paper fill of the reservoir, even though it is no longer present to fulfill contract obligations for irrigation spaceholders. New water entering the reservoir to backfill the space evacuated for flood control as it pertains to the irrigation storage accounts in the Basin 63 reservoirs is used to provide water to fulfill the irrigation rights. Refill after flood control regulation is a "primary objective" of the post-flood control season in Basin 63. No storage account is delivered more than the full amount of the water right during the irrigation season. When refill enters the system it is considered to be under the same priority as the underlying storage priority date.

6. The Army Corp of Engineers and Bureau of Reclamation notifies me when the flood control regulation period has ended. After that time water released from the reservoir system begins to be charged to the irrigation storage accounts. Prior to that time, water entering the reservoir to refill the space evacuated by flood control releases is not accounted as new or excess water because if the reservoir is not physically full after the flood control releases, even though it had previously paper filled.

7. To my knowledge this has been the administrative policy concerning refill of Boise River reservoirs as long as the system has been administered.

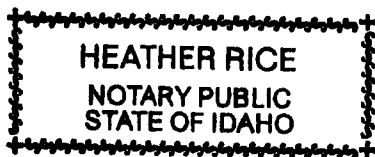
8. To my knowledge none of the partially decreed and licensed Basin 63 storage water rights administered for irrigation contract spaceholders contain a remark that either explicitly provides that refill may occur, or expressly limiting refill.

9. At no time since I have administered the water rights in Basin 63 have I been instructed that refill may not occur unless the licensed and partially decreed storage water rights contain a remark expressly providing for such a practice.

DATED THIS 8 day of June, 2012.

Rex Barrie
Rex Barrie, Basin 63 Watermaster

SUBSCRIBED AND SWORN to before me this 8th day of June, 2012.



Heather Rice
NOTARY PUBLIC FOR IDAHO
Residence: Boise
My Commission Expires: 12/16/2015

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2012, I served a true and correct copy of the foregoing AFFIDAVIT OF REX BARRIE, BASIN 63 WATERMASTER on the person(s) listed below, by U.S. Mail, and electronic mail if available:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

U.S. Bureau of Reclamation
Regional Director, PN Region
1150 N. Curtis Rd., Ste. 100
Boise, ID 83706-1234

Jerry R. Rigby
P.O. Box 250
Rexburg, ID 83440-0250

U.S. Department of Justice
Division of Env. & Natural Resources
550 W. Fort Street, MSC 033
Boise, ID 83706-1234

Randall C. Budge
Candice M. McHugh
P.O. Box 1391
Pocatello, ID 83201

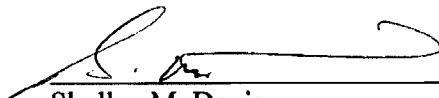
Robert L. Harris
P.O. Box 50130
Idaho Falls, ID 83405

Idaho Attorney General's Office
Natural Resources Division
P.O. Box 44449
Boise, ID 83711-4449

James C. Tucker
Idaho Power Company
P.O. Box 70
Boise, Idaho 83707

Josephine P. Beeman
409 W. Jefferson St.
Boise, ID 83702

A. Dean Tranmer
P.O. Box 4169
Pocatello, Idaho 83201


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Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034
Attorneys for Boise Project Board of Control

**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. 01-2064, 01-2064A-G, and L,
) 01-10042, 01-10042A and B, 01-10053A,
) and 01-10190 (American Falls Subcases), and
) 01-2068, 01-6068D-F, M, and Y, 01-10043,
) 01-10043A and E, 01-10191, and 01-10389
) (Palisades Subcases)

) **AFFIDAVIT OF RON SHURTLEFF,**
) **BASIN 65 WATERMASTER**
)
)
)
)
)

STATE OF IDAHO)
) ss.
County of Ada)

RON SHURTLEFF, being first duly sworn upon oath, deposes and states as follows:

1. I am over the age of eighteen and the below facts are based on my personal knowledge. I am employed by the Idaho Department of Water Resources and Water District No.

AFFIDAVIT OF RON SHURTLEFF, BASIN 65 WATERMASTER

65 as the Watermaster for District 65. I have been the Basin 65 Watermaster since 2002. I am responsible for administering the water rights on the Payette River. One of my responsibilities includes coordinating with the Bureau of Reclamation on reservoir operation on the Payette River including making determinations concerning flood control releases and reservoir fill and release to fulfill the contractual obligations to irrigation spaceholders in the reservoirs.

2. The Payette River flood control practices are dictated by the Bureau of Reclamation and the Idaho Department of Water Resources, and are based on historic operational policies.

3. All water entering the Payette River reservoirs is counted toward the initial paper fill of the reservoir. When flood control water is passed through the reservoirs the water passed for flood control is not deducted from the storage accounting of the reservoir, even though it is no longer physically stored in the reservoir. Water entering the reservoir to replace the water evacuated for flood control is not considered "refill" of the system, but rather replacement of water that was evacuated controllably to make room for impending inflow that might otherwise pose an uncontrollable flood threat. Therefore, the term "refill" is not really the appropriate term to use, since the water is not considered additional water in the system and is not accounted as additional water above the initial paper fill of the reservoir.

4. No storage account is delivered more than the full amount of the water right during the irrigation season.

5. When water enters the reservoir system to replace water lost to flood control, because it is not water in excess of the maximum capacity of the reservoir, then that water is stored in conformance with the priority of the original storage rights in the reservoir.

6. The Idaho Department of Water Resources and Bureau of Reclamation work cooperatively with me to assess the basin accounting to determine the end of the flood control period and when being passed through the system is accounted against the storage accounts to fulfill spaceholder contracts.

7. To my knowledge this has been the administrative policy concerning refill of Payette River reservoirs as long as the system has been administered.

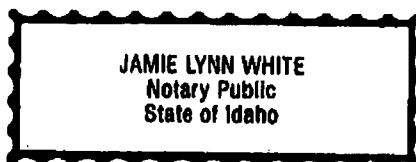
8. To my knowledge none of the partially decreed and licensed Basin 65 storage water rights administered for irrigation contract spaceholders contain a remark that either explicitly provides that refill may occur, or expressly limiting refill.

9. At no time since I have administered the water rights in Basin 65 have I been instructed that refill may not occur unless the licensed and partially decreed storage water rights contain a remark expressly providing for such a practice.

DATED THIS 8th day of June, 2012.

Ron Shurtleff
Ron Shurtleff, Basin 65 Watermaster

SUBSCRIBED AND SWORN to before me this 8th day of June, 2012.



Jamie Lynn White
NOTARY PUBLIC FOR IDAHO
Residence: Payette, ID
My Commission Expires: April 26, 2018

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2012, I served a true and correct copy of the foregoing AFFIDAVIT OF RON SHURTLEFF, BASIN 65 WATERMASTER on the person(s) listed below, by U.S. Mail, and electronic mail if available:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

U.S. Bureau of Reclamation
Regional Director, PN Region
1150 N. Curtis Rd., Ste. 100
Boise, ID 83706-1234

Jerry R. Rigby
P.O. Box 250
Rexburg, ID 83440-0250

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Division of Env. & Natural Resources
550 W. Fort Street, MSC 033
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Randall C. Budge
Candice M. McHugh
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Pocatello, ID 83201

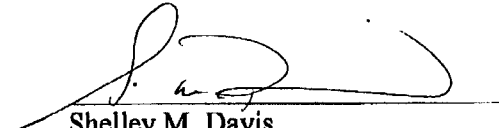
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Idaho Falls, ID 83405

Idaho Attorney General's Office
Natural Resources Division
P.O. Box 44449
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James C. Tucker
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Shelley M. Davis