

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUL 19 2012

By _____

Clerk

Deputy Clerk

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Attorneys for the State of Idaho

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. 1-9, 1-17, 1-2050

**STIPULATION TO RESOLVE
OBJECTIONS**

Milner Irrigation District ("Milner"), the United States Bureau of Reclamation, Fremont-Madison Irrigation District et al.,¹ the Ground Water Districts,² the City of Pocatello, and the State of Idaho (collectively, the "Parties"), by and through their counsel of record, and the Idaho Department of Water Resources, hereby stipulate and agree as follows:

¹ Blackfoot Canal Company, United Canal Company, and Fremont-Madison Irrigation District.
² 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.

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BACKGROUND

Milner filed water right claims 1-9, 1-17, and 1-2050 in the SRBA. IDWR submitted recommendations for these claims in the Director's Report for Basin 01, Part 1, in May 2006. Various objections and responses were filed and certain parties filed motions for summary judgment before Special Master Dolan. On December 11, 2009, Special Master Dolan issued his *Order on Motions for Summary Judgment*. The decision was taken up to the Presiding Judge on permissive review. On June 21, 2011, the Presiding Judge issued his *Memorandum Decision and Order on Permissive Review*. Various objections were then withdrawn in the fall of 2011. On November 30, 2011, IDWR filed an amended Director's Report for water right 1-2050. Milner filed an objection to this amended recommendation. In December 2011, Milner was granted leave to file a late objection to IDWR's recommendation for water right 1-17. Various responses were filed to Milner's objections. On March 30, 2012 IDWR filed an amended Director's Report for water right 1-9. Milner filed an objection to this amended recommendation. Various responses were filed to Milner's objection.

The parties participated in a mediated settlement conference on June 12, 2012. Although the parties and IDWR have various disputes concerning the recommendations and objections, as well as prior decisions in these subcases, the parties and IDWR wish to resolve these disputes without further litigation. This stipulation and accompanying Standard Form 5s (SF5s) submitted herewith, represent the parties' and IDWR's agreement as to how the water rights should be decreed by the SRBA Court.

WATER RIGHT DESCRIPTIONS

The parties and IDWR agree to the proposed water right descriptions as set forth in the accompanying SF5s. The description for water right 1-17 matches IDWR's May 2006 original

STIPULATION TO RESOLVE OBJECTIONS

recommendation. The description for 1-2050 matches IDWR's November 2011 amended recommendation. With respect to water right 1-9, the parties and IDWR agree to split the right into 1-9A and 1-9B and disallow water right 1-9. The descriptions for water rights 1-9A and 1-9B include remarks for surface water and conjunctive administration as to the priority date element. The priority dates in the remarks shall control to the extent they differ from the stated priority date element on the water right descriptions for water rights 1-9A and 1-9B, and IDWR and any applicable water districts (including Water District 01) shall recognize and administer the water rights to the priority dates in the remarks. For purposes of surface water to surface water administration in Water District 01, the parties and IDWR agree that the priority date for water rights 1-9A and 1-9B shall be recognized as April 1, 1939. For purposes of conjunctive administration, the parties and IDWR agree that the priority date for water right 1-9A shall be July 8, 1954 and that the priority date for water right 1-9B shall be July 12, 1967.

ORDER ON PERMISSIVE REVIEW

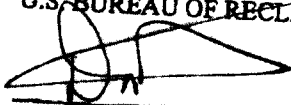
The parties and IDWR request the Court to partially decree water rights 1-9, 1-9A, and 1-9B as set forth in the SF5s accompanying this stipulation. All parties reserve their positions on the scope and legal effect of the Presiding Judge's *Memorandum Decision and Order on Permissive Review* (June 21, 2011) on the issue of priority date for water right 1-9. If water rights 1-9, 1-9A and 1-9B are not recommended or partially decreed pursuant to the SF5s accompanying this stipulation, this stipulation is null and void and no longer binding on the parties with respect to water rights 1-9, 1-9A and 1-9B, and the parties may file summary judgment motions or seek any other legal relief with respect to the above-referenced order or any other remaining issues.

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MUTUAL UNDERSTANDINGS

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
Attorney for U.S. Bureau of Reclamation

7/13/12

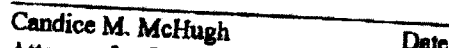
Date

STATE OF IDAHO


Michael C. Orr
Deputy Attorney General

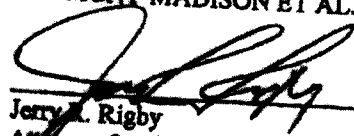
7-10-12
Date

GROUND WATER DISTRICTS


Candice M. McHugh
Attorney for Ground Water Districts

Date

FREMONT-MADISON ET AL.


Jerry A. Rigby
Attorney for Blackfoot Irrigation Company,
Fremont-Madison Irrigation District, and
United Canal Company

7-13-12
Date

CITY OF POCA TELLO


Mitra Pemberton
Attorney for City of Pocatello

Date

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U.S. BUREAU OF RECLAMATION

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

STATE OF IDAHO

Michael C. Orr 7-10-12
Michael C. Orr Date
Deputy Attorney General

GROUND WATER DISTRICTS

2 *Candice M. McHugh* 7-10-12
For Candice M. McHugh Date
Attorney for Ground Water Districts

FREMONT-MADISON ET AL.

Jerry R. Rigby
Attorney for Blackfoot Irrigation Company,
Fremont-Madison Irrigation District, and
United Canal Company

CITY OF POCA TELLO

Mitra Pemberton
Attorney for City of Pocatello

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

STATE OF IDAHO

Michael C. Orr 7-10-12
Michael C. Orr Date
Deputy Attorney General

GROUND WATER DISTRICTS

Candice M. McHugh
Attorney for Ground Water Districts

FREMONT-MADISON ET AL.

Jerry R. Rigby **Date**
Attorney for Blackfoot Irrigation Company,
Fremont-Madison Irrigation District, and
United Canal Company

CITY OF POCA TELLO

Mitra Pemberton 7/12/12
Mitra Pemberton Date
Attorney for City of Pocatello

STIPULATION TO RESOLVE OBJECTIONS

MILNER IRRIGATION DISTRICT

Travis L. Thompson 7/11/12
Date
Barker Rosholt & Simpson LLP
Attorneys for Milner Irrigation District

IDAHO DEPARTMENT OF WATER RESOURCES

Gary Spackman 7/13/2012
Date
Gary Spackman, Director

STIPULATION TO RESOLVE OBJECTIONS

CERTIFICATE OF SERVICE

I certify that on this 18th day of July, 2012, I caused to be served the original and copies of the **STIPULATION TO RESOLVE 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

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to:

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

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☐ Statehouse Mail

Represented by:
CANDICE MCHUGH
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHTD.
101 CAPITOL BLVD., STE. 208
BOISE, ID 83702

USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

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☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☐ Statehouse Mail

UNITED STATES OF AMERICA
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION PN-3100
1150 N CURTIS RD STE 100
BOISE, ID 83706-1234

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

CITY OF POCATELLO
Represented by:

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
☒ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

John Harris