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DEPARTMENT OF
WATER RESOURCES

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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	)	Subcase Nos.: 01-02064, <i>et al.</i> &
	)	01-02068, <i>et al.</i> (See Attachment A)
Case No. 39576	)	
	)	THE UNITED STATES' MOTION FOR
	)	ISSUANCE OF SPECIAL MASTER'S
	)	RECOMMENDATION ON REFILL
	)	ISSUE
_____	)	

The United States, Bureau of Reclamation, by and through its attorney of record, hereby files this motion for a Special Master's recommendation on the refill issue in the subcases listed on Attachment A.

On July 27, 2012, this Court issued an **Order on Motions for Partial Summary Judgment** ("Order") in these subcases. The Court's Order addressed a remark proposed by the State addressing Reclamation's ability to refill American Falls and Palisades Reservoirs. The Court's Order held that "[t]he licenses for American Falls and Palisades Reservoirs contained no

such remark and the SWC correctly pointed out the State has no one-fill rule,” and that “[t]he State’s refill remark is not necessary to define and/or efficiently administer the American Falls and Palisades Reservoir irrigation storage rights.” Order 18. The Court explained that any remark that merely restated Idaho water law “is not necessary to define, clarify or administer irrigation storage rights, especially where there are variations between reservoirs and their licenses.” *Id.* Although the Court did not expressly address the United States’ proposed refill remark, its reasoning effectively precludes the United States’ proposed remark as well. First, the Court ruling on the State’s proposed remark effectively rejected the idea that a single remark could be appropriate because of the “variations between reservoirs and their licenses.” Second, the Court’s recognition that definitions for fill and refill are better made by legislators than the judiciary applies as strongly to the remark proposed by the United States as it does to that proposed by the State. *Id.* As a result the United States views the Court’s Order as effectively ruling that no refill remark is appropriate and fully resolving the “refill” issue.¹

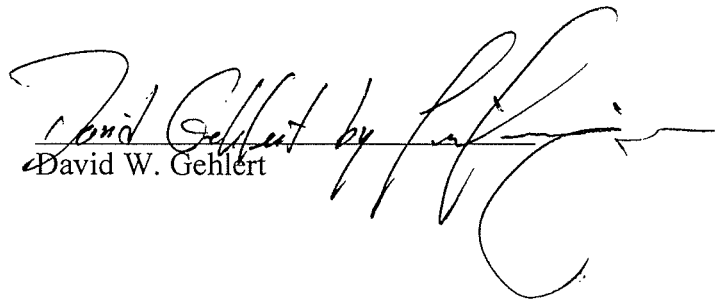
AO1 § 9(d) provides “water right claim which has not had full resolution of every element of the right” may be submitted to the Presiding Judge if “the Special Master, simultaneously with the filing of the report, certifies to the Presiding Judge that there has been an express determination that there is no just reason for delay for submission to the Presiding Judge.” Therefore, the United States moves this Court to enter a Special Master’s recommendation holding that no refill remark is necessary to define or effectively administer these water rights.

¹ As the Court’s Order acknowledges in its April 19, 2007 *Objections* the United States’ proposed a refill remark. Order at 2. The United States no longer supports that remark. Thus, to the extent the Court did not intend to proscribe the United States’ proposed remark, the United States withdraws its request for that remark.

Both this Court and the State have recognized the value of a Special Master's Recommendation once a significant issue is resolved. As the State pointed out in seeking a recommendation on the elements related to the hydropower storage rights at issue in these subcases, a Special Master's Recommendation on the refill issue "will provide the parties finality on the matter and narrow the issues remaining in th[ese] subcase[s] that may go to trial." Motion for Issuance of Special Master's Recommendation at 2 (Sept. 29, 2011). Further it will help the parties' ongoing settlement discussions by "clearing the field of issues that are no longer in play in this proceeding." *Id.* This Court concurred in the value of a recommendation and granted the State's motion. *Order Granting Motion for Issuance of Special Master's Recommendation* (Jan. 12, 2012).

Given the potential for protracted negotiations and/or litigation on the other issues in these subcases, there is no just reason to delay submission of the refill issue to the Presiding Judge. That rationale is even more appropriate here than in the hydropower context because two Motions addressing refill are already pending before the Presiding Judge. *Petition to Designate Basin-Wide Issue*, Subcase No. 00-39576 (June 8, 2012); *Motion to Consolidate Issue Regarding "Refill" of Bureau of Reclamation Storage Rights*, Subcase No. 00-91017 (July 11, 2012).

DATED this 20 day of August, 2012.


David W. Gehlert

CERTIFICATE OF SERVICE

I certify that on August 20, 2012, I served true and correct copies of the foregoing THE UNITED STATES' MOTION FOR ISSUANCE OF SPECIAL MASTER'S RECOMMENDATION AS TO REFILL ISSUE as follows:

via FedEx mail and facsimile:

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by David W. Gehlert 
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Attachment A

American Falls Subcases

01-02064
01-02064A
01-02064B
01-02064C
01-02064D
01-02064E
01-02064F
01-02064L
01-10042
01-10042A
01-10042B
01-10053A
01-10190

Palisades Subcases

01-02068
01-02068D
01-02068E
01-02068F
01-02068M
01-02068Y
01-10043
01-10043A
01-10043E
01-10191
01-10389