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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

Case No. 39576

Subcase Nos. Attachment A

**SURFACE WATER
COALITION'S REPLY IN
SUPPORT OF MOTION TO
STAY PROCEEDINGS ON
"REFILL" REMARK**

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley
Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal

Company and Twin Falls Canal Company, (hereinafter collectively referred to as the “Surface Water Coalition,” “Coalition, or “SWC”), by and through counsel of record, and hereby submit this *Reply in Support of Motion to Stay Proceedings on “Refill” Remark Objections*. This *Reply* addresses the State of Idaho’s *Response* filed on October 16, 2012.

ARGUMENT

I. The Special Master Has Jurisdiction Over the Outstanding “Refill” Objections and Should Stay Further Proceedings Regardless of the Outcome of the Motion to Consolidate in Basin Wide Issue 17 (BW 17).

The State alleges the Coalition’s motion should be denied because “it raises procedural questions that are already pending before the Presiding Judge.” *State Response* at 5. Just the opposite, the outstanding motion for consolidation is yet another reason to grant the Coalition’s motion. Although both motions recognize the “refill” issue should be decided in a single forum (not in multiple separate subcases), the relief requested is markedly different. Contrary to the State’s argument, the Coalition’s motion for stay is not seeking consolidation with the Basin-Wide 17 proceeding. Instead, the Coalition is seeking a stay of the current litigation until the Basin-Wide 17 proceeding is completed. Since the outcome of the Basin Wide 17 case will have an impact on the “refill” objections still pending in the Basin 01 subcases, it makes sense to stay the litigation and receive further legal direction from the Presiding Judge before moving forward. Stated another way, the outcome of the BW 17 case may narrow the scope of the Basin 01 subcases, which would assist the parties and the Special Master prior to any trial. Alternatively, the Presiding Judge’s decision may moot the remaining objections altogether. Rather than forge ahead on two separate paths the interests of judicial economy support a stay of the Basin 01 proceedings.

Contrary to the State's implication, the Special Master has jurisdiction over the objections and can stay the litigation regardless of a ruling on the motion to consolidate in the Basin-Wide 17 proceeding. If the motion to consolidate is granted then the "refill" issues in Basin 01 will no longer be pending before the Special Master. However, if the motion is denied, then the Special Master will still have to consider the objections while the Basin-Wide 17 case is pending.

At a minimum it makes sense to stay the pending litigation at least until the Presiding Judge rules on the motion for consolidation. After all, if the matter is consolidated with BW 17, then the Presiding Judge, not the Special Master will govern further proceedings.

II. Regardless of the Scope of the Issue in the Basin 01 Subcases, the Special Master Should Stay the "Refill" Litigation Until BW 17 is Complete.

The State further alleges the Coalition's motion should be denied because it would stay matters "outside of Basin-Wide Issue 17 that need not be further delayed." *State Response* at 7. The State assumes that is the case because of the pleadings filed to date, namely the objections. Although the SRBA objection pleading only requires a party to "check the box", Reclamation filed an amended claim seeking a priority "refill" remark for American Falls and Palisades Reservoirs. *See Amended Notices of Claim 01-2064 and 01-2068*. Reclamation has not filed a motion to amend its claim and has no legal right to do so without the Court's permission.¹ *See* Administrative Order No. 1, 4(2)(b). The State admits that whether a remark is necessary to refill, under priority, space vacated for flood control is pending before the Presiding Judge. *See State Response* at 9. Accordingly, the State agrees that at least part of the claims and objections at issue in Basin 01 will be resolved in the Basin Wide 17 proceeding and should be stayed.

¹ Moreover, Reclamation must consult with and obtain the consent of the spaceholders, the equitable title owners of the storage water rights.

However, the State does not appreciate or address the interests of judicial economy and the costly and timely discovery that looms in front of the parties. Although the scope of the “refill” issues in the Basin 01 subcases may go beyond the issue designated in BW 17, discovery is ongoing and how the “refill” issue is ultimately defined and decided by the Court is not certain at this point. Regardless of the scope of the “refill” issue, the real question is whether litigation should proceed on two separate tracks, or whether the Special Master should defer to the Presiding Judge before holding a trial.

Even if the “refill” issues in Basin 01 are broader, further defining or narrowing the “refill” issue after resolution of BW 17 would be more efficient and helpful to both the parties and the Court. That is the result of staying the present litigation. Rather than addressing all issues, including “refill” of space vacated for flood control under priority, the Special Master should stay the litigation and then decide the scope of the “refill” objections that remain, including whether further proceedings and a trial are even necessary at that point.

A temporary stay of the litigation over the “refill” remark objections to a certain period (i.e. 60-90 days following the decision in BW 17) would not prejudice any party, but would save countless hours and resources. Moreover, the outcome of the Basin Wide Issue 17 case may moot the “refill” remark objections altogether. If that is the ultimate result, then further litigation and a trial on the objections would have been a waste of both the parties’ and the Court’s time and resources.

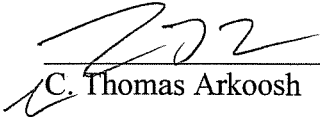
CONCLUSION

The Special Master has jurisdiction over the “refill” remark objections in the Basin 01 subcases. Although a motion to consolidate is pending before the Presiding Judge, the Special Master can and should order a stay of the “refill” issue in the Basin 01 subcases. Since the Basin

Wide 17 case concerns the “refill” issue and may affect the outcome of the Basin 01 subcases, the Special Master should stay further litigation over the “refill” remark objections until that proceeding is completed.

DATED this 17th day of October, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October, 2012, I served a true and correct copy of the foregoing **SURFACE WATER COALITION'S REPLY IN SUPPORT OF MOTION TO STAY** on the person(s) listed below, by U.S. Mail, and electronic mail if available:

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ATTACHMENT A

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01-219

Jackson Lake

01-4055

01-10044

01-10045

01-10045A

01-10045B

01-10196

American Falls Reservoir

01-2064

01-2064A

01-2064B

01-2064C

01-2064D

01-2064E

01-2064F

01-2064L

01-10042

01-10042A

01-10042B

01-10053A

01-10190

Palisades Reservoir

01-2068

01-2068D

01-2068E

01-2068F

01-2068M

01-2068Y

01-10043

01-10043A

01-10043E

01-10191

01-10389