

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. 01-02064
) (American Falls)
)

) STIPULATION - IDAHO POWER
) COMPANY'S MOTION TO ALTER OR
) AMEND SPECIAL MASTER REPORT
) AND RECOMMENDATION
)

Background

On October 23, 2012, Special Master Dolan issued an order staying further proceedings in this, and other related, subcases on “fill” and “refill” issues. *Order Staying Further Proceedings Before Special Master on “Fill” and “Refill” Matters, Subcase Nos. 01-219 (Lake Walcott), 01-4055, et al. (Jackson Lake), 01-2068, et al. (Palisades Reservoir), 01-2064, et al. (American Falls Reservoir)*. The stay order granted the Surface Water Coalition’s request to stay its “refill” objections “pending the resolution of Basin-Wide Issue 17 to avoid litigation of the same issues on multiple fronts”. *Id.*, at 1.

“Trial on all remaining Basin 01 ‘non-refill’ issues...was held on December 10, 2012”. *Special Master Report and Recommendation, Subcase Nos. 01-219 (Lake Walcott), 01-2064 (American Falls Reservoir), 01-4055 (Jackson Lake), 01-10042 (American Falls Reservoir), 01-10043 (Palisades Reservoir), 01-10044 (Jackson Lake), 01-10045 (Jackson Lake)* (Jan. 9, 2013), at 2. The *Special Master Report and Recommendation* provided that the December 10, 2012 trial, together with the *Report and Recommendation*, resolved all remaining “non-refill” issues in this

subcase, and recommended that entry of partial decrees be withheld “pending the final resolution of Basin-Wide Issue 17”. *Id.*

On January 22, 2013 the Idaho Power Company filed *Idaho Power Company’s Motion to Alter or Amend Special Master Report and Recommendation*, asking that the January 9, 2013 *Special Master Report and Recommendation* be amended to reflect that pursuant to a *Stipulation* filed by the parties to this subcase on September 25, 2012, the issue of how the Idaho Power Company’s ownership interest in Water Right 01-2064 (American Falls) should be referenced and preserved in the partial decree had been reserved and therefore was not resolved by the December 10, 2012 trial.¹

This *Stipulation* is being filed to resolve the *Idaho Power Company’s Motion to Alter or Amend Special Master Report and Recommendation*.

Stipulation

The undersigned parties, including the Idaho Department of Water Resources², by and through their counsel of record, stipulate and agree that the following “Ownership Remark” may be included as a remark in the partial decree for Water Right 01-2064:

- a. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the

¹ September 25, 2012, *Stipulation*, In Re SRBA, Case No. 39576, Subcase Nos. 01-2064, 01-10042 (American Falls Reservoir). Pursuant to this *Stipulation*, ownership remarks were subsequently adopted by the Court in the January 9, 2013 *Special Master Report and Recommendation* for inclusion in Water Rights 01-219 (Lake Walcott); 01-10042 (American Falls); 01-10043 (Palisades); 01-4055, 01-10044, 01-10045 (Jackson Lake); 21-2156, 21-10560 (Island Park); 21-4155 (Grassy Lake); and 25-7004 (Ririe). The *Stipulation* did not contain a proposed Ownership remark for Water Right 01-2064 because, as stated in footnote 4 of the *Stipulation*, the Idaho Power Company had not resolved its objection concerning the precise wording of the Ownership remark for this water right.

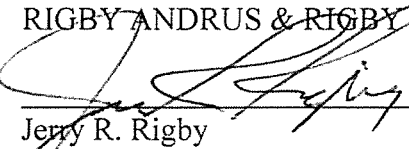
² IDWR is not a “party” to the SRBA. The IDWR joins in this stipulation pursuant to its role as an independent expert and technical assistant to the Court. See I.C. § 42-1401B.

water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations. The Idaho Power Company uses the water decreed for power purposes herein to generate hydropower.

The inclusion of the foregoing Ownership Remark in the partial decree for Water Right 01-2064 will resolve the Idaho Power Company's objection to the ownership issue for Water Right 01-2064 and the *Idaho Power Company's Motion to Alter or Amend Special Master Report and Recommendation* filed with this Court on January 22, 2013.

This Stipulation is being executed by the parties by separate signature pages.

RIGBY ANDRUS & RIGBY CHTD.


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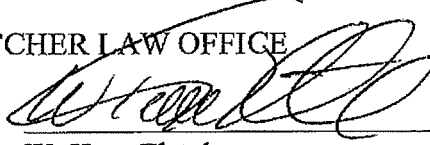
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Stipulation - Idaho Power Company's Motion to Alter or Amend Special Master Report and Recommendation

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CERTIFICATE OF SERVICE

I certify that on August 13, 2013, I served true and correct copies of the foregoing STIPULATION via First Class U.S. Mail, pre-paid as follows:

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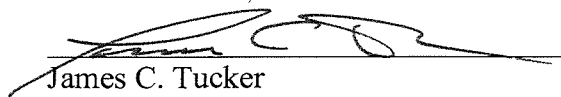
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