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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

No. 39576

)
) Subcase Nos. 63-303, 63-3613, 63-3614, and 63-3618
)
) **STATE OF IDAHO'S REPLY BRIEF RE: CITY**
) **OF POCATELLO'S and COALITION OF CITIES'**
) **RESPONSES TO MOTION TO ALTER OR**
) **AMEND PARTIAL DECREES FOR WATER**
) **WATER RIGHT NOS. 63-303, 63-3613, 63-3614,**
) **and 63-3618**
)

INTRODUCTION

The State of Idaho ("State"), by and through its attorneys of record, and pursuant to SRBA Administrative Order 1, the Idaho Rules of Civil Procedure, and this Court's *Notice Vacating and Resetting Hearing* (Apr. 5, 2019), hereby submits this reply in support of the *Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and*

63-3618, which was filed by the State on February 19, 2019 (“*State’s Motion*”).¹ In this reply brief, the State only addresses the *Responses* to the *State’s Motion* filed on April 15, 2019 by the City of Pocatello and the “Coalition of Cities” (collectively, the “Cities”).²

PROCEDURAL BACKGROUND

Water right nos. 63-303, 63-3613, 63-3614, and 63-3618 (the “Base Rights”) were decreed in the SRBA ten or more years ago. Some years later, a dispute arose in the SRBA regarding whether “Idaho law require[s] a remark authorizing storage rights to ‘refill,’ under priority, space vacated for flood control?” *In re SRBA Case No. 39576, Subcase No. 00-91017*, 157 Idaho 385, 387, 336 P.3d 792, 794 (2014). Among other things, this dispute led to the filing of “late claims” for what were essentially “refill” water rights for certain federal reservoirs in Basins 01, 21, 37, 63, and 65.

The resulting subcases in Basins 01, 21, and 37 were resolved by settlements. The late claims in the Basin 63 and 65 subcases became the subject of extensive discovery, litigation, and negotiation. No settlement was reached in the Basin 65 subcases, and ultimately those late claims were decreed as disallowed. The negotiations in the Basin 63 subcases—subcase nos. 63-

¹ While the State filed three motions on February 19, 2019, this reply addresses only one of the three: the *Motion to Alter or Amend Partial Decrees for Water Rights Nos. 63-303, 63-3613, 63-3614, and 63-3618*. For purpose of this reply brief, the term “*State’s Motion*” does not include or refer to the other two motions filed by the State on February 19, 2019, which requested that this Court issue partial decrees for water right nos. 63-33734A and 63-33734B, and disallow water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738 (i.e., the “Late Claims”).

² The State is filing separate reply briefs to address responses to the State’s *Motion to Alter or Amend Partial Decrees for Water Rights Nos. 63-303, 63-3613, 63-3614, and 63-3618* filed by the cities of Boise and Mountain Home. The State is also filing separate reply briefs to address motions filed by the cities of Mountain Home and Boise to participate in the Late Claims and subcase nos. 63-33734A and 63-33734B. The State is also filing a separate motion to strike the City of Mountain Home’s SF-1 “Objections” in subcase nos. 63-33734A and 63-33734B.

33732, 63-33733, 63-33734, 63-33737, and 63-33738 (the “Late Claims”)—resulted in a *Stipulation* that was executed by all of the parties of record. The *Stipulation*, if fully implemented, will resolve the Late Claims, and also the pending appeals of this Court’s judicial review decision regarding IDWR’s water right accounting procedures for Water District 63 (Boise Basin).

Among other things, the *Stipulation* calls for the State to file a motion to alter or amend the existing partial decrees for the Base Rights. *State’s Motion* at 3-4; *Stipulation* at 4-5.³ The *State’s Motion* requests that two administrative remarks be added to the partial decrees for the Base Rights: a “combined use” remark and a “reset” remark. *Id.* at 2. These remarks are the same as the “combined use” and “reset” remarks that the parties to the Late Claims have agreed should be included in the partial decrees for water right nos. 63-33734A and 63-33734B. *Id.* at 4.

The City of Pocatello “does not take a position on the substantive terms and conditions that are offered” in the *State’s Motion*, but rather is interested “solely in the legal and procedural arguments may be advanced either in support of, or in opposition to,” the *State’s Motion*, “and specifically the application of Rule 60.” *City of Pocatello’s Response* at 2. That said, the City of Pocatello’s *Response* does not challenge or question “the legal and procedural arguments” advanced in the *State’s Motion*, including those addressing “the application of Rule 60.” *Id.* The City of Pocatello’s interest, rather, is in a Rule 60 motion that “it is anticipated” will be filed in connection with the Upper Snake Basin “reset” settlement. *Id.* at 1-2.

The Coalition of Cities filed a response for essentially the same reason as the City of Pocatello: the Coalition’s interest in the Upper Snake Basin “reset” settlement, and an

³ A copy of the *Stipulation* is appended to the *Motion* as “Exhibit 1.”

“anticipated” Rule 60(b) motion. *Coalition of Cities’ Response* at 2-3 The Coalition of Cities also did not state any objection to the substance of the amendments proposed in the *State’s Motion*. Moreover, the Coalition of Cities affirmatively stated it “does not contest the [*State’s Motion*] meets the standards of I.R.C.P. 60(b)(6).” *Id.* at 2.⁴

ARGUMENT

The Cities has not asserted that the *State’s Motion* should be denied, and have provided no reasons for denying the *State’s Motion*. If the Cities see something in the *State’s Motion* that they believe would injure the City’s interests, then it is up to the Cities to identify or articulate the problem. That is the purpose of a “response” brief. But the Cities’ *Responses* do no such thing. Because the Cities’ *Responses* do not provide any cognizable grounds for denying the *State’s Motion*, the *State’s Motion* should be granted.⁵

The most natural reading of the Cities’ *Responses* is that they have no objection at all to the *State’s Motion*, but rather are interested only in the potential application of any arguments made in connection with the *State’s Motion* to the “reset” settlement in the Upper Snake Basin.

⁴ The Coalition of Cities’ *Response* incorrectly asserts that the settlement negotiated by the parties to the Late Claims “requires the re-opening of the reservoir base rights.” *Coalition of Cities’ Response* at 2. The only relief requested by the State’s motions to decree water rights nos. 63-33734A and 63-33734B is that this Court issue the partial decrees proposed by the motions, and disallow claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. Further, the *Stipulation* is not contingent upon this Court granting the State’s *Motion* to alter or amend, and remains effective and binding even if the *State’s Motion* to alter or amend is denied. *Stipulation* at 6-7.

⁵ SRBA Administrative Order 1 § 6(f) and this Court’s scheduling notices provided the Cities with ample opportunity to consider the *State’s Motion* and to identify any objections that the Cities may have to the proposed amendments to the Base Rights. Having failed to do, the Cities should be precluded from raising any objections in subsequent proceedings under the *State’s Motion*.

While the State has no objection to the Cities' participation in this matter for that limited purpose, this does not mean that the legal and factual issues presented by the *State's Motion* are the same as those that are involved in the Upper Snake Basin "reset" settlement. Moreover, the Upper Snake Basin "reset" settlement is not before this Court pursuant to any of the motions that the State filed on February 19, 2019. This proceeding also does not include the record necessary to address any concerns that the Cities might have with the Upper Snake Basin "reset" settlement, including any Rule 60(b) motion that is "anticipated" in connection with that settlement. The State reserves all of its rights, positions, and arguments regarding the Upper Snake Basin "reset" settlement, including any Rule 60(b) motion that may be filed in connection with that settlement.

CONCLUSION

For the reasons discussed herein and in the *State's Motion*, the State respectfully requests that this Court grant to the *State's Motion* to amend the Base Rights.

Respectfully submitted this 30th day of April, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April 2019, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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