

OCT 31 2019

DEPARTMENT OF
WATER RESOURCES

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Jonas A. Reagan, ISB #10566
BARKER ROSHOLT & SIMPSON LLP
163 Second Ave. West
P.O. Box 63
Twin Falls, Idaho 83303-0063
Telephone: (208) 733-0700
Facsimile: (208) 735-2444
Email: jks@idahowaters.com
tlr@idahowaters.com
jreagan@idahowaters.com

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company*

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548
Email: wkf@pmt.org

*Attorneys for American Falls Reservoir District
#2 and Minidoka Irrigation District*

[ADDITIONAL PARTIES/COUNSEL LISTED
ON SIGNATURE PAGE]

**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**
)
) **JOINT MOTION TO MODIFY**
) **PARTIAL DECREES FOR**
) **PURPOSE OF DIVERSION RATE**
) **AND "RESET" ADMINISTRATIVE**
) **REMARKS**
)
)
)
)
)

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 (collectively "Surface Water Coalition" or
"Coalition"), Fremont Madison Irrigation District, Idaho Irrigation District, North Fork

Reservoir Company, and New Sweden Irrigation District (collectively “Upper Valley Storage Holders”), the Coalition of Cities,¹ Idaho Power Company, Aberdeen-Springfield Canal Company, Palisades Water Users, Inc. and the City of Idaho Falls (collectively “PWUI”), the Shoshone-Bannock Tribes, and the City of Pocatello (hereinafter collectively referred to as the “Parties”), by and through their undersigned attorneys of record, pursuant to Administrative Order 1 and Rule 60(b)(6) of the Idaho Rules of Civil Procedure, the Settlement Agreement executed by all parties, and hereby move this Court to modify the partial decrees listed at Attachment A as follows. This joint motion is supported by the accompanying *Memorandum in Support* and the *Declaration of Travis L. Thompson* and attached exhibits. The Shoshone-Bannock Tribes are also filing a separate *Memorandum in Support* together with the *Declaration of Edmund Clay Goodman*.²

First, the parties seek limited relief to modify partial decree 01-219 to include a diversion rate remark on the quantity element. Water right 01-219 was originally decreed and licensed with a 2,500 cfs diversion rate limitation. The water right was historically administered according to the quantity limitation for nearly a century. IDWR then removed the diversion rate in the SRBA and the storage right was partially decreed with only an annual volume, similar to other storage water rights in Basin 01 and other administrative basins around the state. The unintended consequence of this action resulted in less water available to junior natural flow rights near the end of the irrigation season in certain years, which subsequently led to a dispute as to whether this reduction in available water constituted injury to those water rights. The

¹ The Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone and Wendell.

² The Parties reserve all rights concerning any disputes or interpretations of the Fort Hall Agreement. While the Shoshone-Bannock Tribes have advanced arguments unique to their water rights and interpretation of the Fort Hall Agreement, the remaining undersigned parties reserve all rights concerning their respective positions.

Parties' Stipulated Settlement seeks relief from the final judgment to clarify the water right's quantity element in a manner consistent with history and the expectations of the parties. Further, the proposed remark dovetails with the general reset remark for all storage rights set forth below.

Second, the Parties seek limited relief to modify the Basin 01 storage water right partial decrees (Attachment A) for the limited purpose of including remarks that are necessary for the efficient administration of the water rights and to clarify the season of use and the starting and ending point for counting water towards the annual storage volume. The water rights all include a decreed season of use of 1/1 to 12/31, but the Parties dispute whether that means that Water District 01 must wait until January 1st of each year to "reset" the accounting for the storage water rights in Basin 01. Rather than wait until January 1st each year to begin administration to the storage rights, water users and Water District 01 have relied upon the historical practice of an accounting "reset" that begins in the fall which is critical for water use and effective reservoir operations.

The Parties are seeking this relief to effectuate a recent Stipulated Settlement that resolves the outstanding administrative dispute over these matters. The Stipulated Settlement is a fair and equitable resolution reached through good faith negotiations. The resolution is supported by all spaceholders and provides certainty for Water District 01 water users. The resolution will ensure efficient administration of the storage water rights moving forward. Whereas administration varied in the past, the Parties seek to have this resolution effectuated through the following limited changes to the partial decrees:

1-219 (Quantity Element):

The rate of diversion to storage shall be limited to 2,500 cfs from September 15th through and including October 15th.

1-219 et al. (Other Provisions Necessary for Definition or Administration of this Water Right):

September 15th shall begin the annual period for water right accounting in the Upper Snake River Basin upstream of Milner Dam. The September 15th beginning date for this annual period is known as the “reset date” for reservoir volumes. The “reset date” allows previously satisfied reservoir water right volumes to begin filling again for the next annual storage volume period. The annual storage volume period will extend from September 15th to the following September 14th. Consistent with Section 8.3 of the 1990 Fort Hall Indian Water Rights Agreement, nothing in this provision is intended to impact the rights described and administered pursuant to that Section.

The Parties submit the above remarks are “necessary for the definition of the rights or for the efficient administration” of the Basin 01 storage water rights and will effectuate the Settlement Agreement. *See* I.C. § 42-1412(6).

The Parties respectively request the Court to grant the motion and modify the decrees to include the above remarks. The Parties request oral argument on this motion.

DATED this 30th day of October, 2019.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Travis L. Thompson
Attorneys for A&B Irr. Dist. et al.

SOMACH SIMMONS & DUNN

 for

Sarah A. Klahn
Attorneys for City of Pocatello

MCHUGH & BROMLEY

 for

Candice M. McHugh
Attorneys for City of Bliss et al.

FLETCHER LAW OFFICE

 for

W. Kent Fletcher
Attorneys for AFRD#2 et al.

RIGBY ANDRUS & RIGBY

 for

Jerry R. Rigby
Attorneys for FMID et al.

PARSONS BEHLE & LATIMER

 for

Norman M. Semanko
Attorneys for ASCC

HOLDEN KIDWELL HAHN & CRAPO



for

Robert L. Harris

Attorneys for Palisades Water Users et al.

SHOSHONE-BANNOCK TRIBES



for

William F. Bacon

Attorneys for Shoshone-Bannock Tr.

HOBBS, STRAUS, DEAN & WALKER, LLP



for

Edmund C. Goodman

Attorneys for Shoshone-Bannock Tribes

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 2019, I served a true and correct copy of the foregoing **JOINT MOTION TO MODIFY PARTIAL DECREES FOR PURPOSE OF DIVERSION RATE AND "RESET" ADMINISTRATIVE REMARKS** on the person(s) listed below, by U.S. Mail, and electronic mail if available:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

U.S. Bureau of Reclamation
Regional Director, PN Region
1150 N. Curtis Rd., Ste. 100
Boise, ID 83706-1234

Jerry R. Rigby
P.O. Box 250
Rexburg, ID 83440-0250

Craig Hobdey
P.O. Box 176
Gooding, ID 83330-0176

Randall C. Budge
T.J. Budge
P.O. Box 1391
Pocatello, ID 83201

U.S. Department of Justice
Division of Env. & Natural Resources
550 W. Fort Street, MSC 033
Boise, ID 83706-1234

Idaho Attorney General's Office
Natural Resources Division
P.O. Box 83720
Boise, ID 83720-0010

Kirk Bybee
P.O. Box 4169
Pocatello, ID 83201

Sarah A. Klahn
2033 11th St., #5
Boulder, CO 80302

Sarah W. Higer
Idaho Power Company
P.O. Box 70
Boise, ID 83707

Albert P. Barker
P.O. Box 2139
Boise, ID 83701-2139

Andrew Waldera
P.O. Box 7985
Boise, ID 83707

Charles F. McDevitt
P.O. Box 1543
Boise, ID 83701-1543

Chris M. Meyer
Michael P. Lawrence
P.O. Box 2720
Boise, ID 83701-2720



Travis L. Thompson

ATTACHMENT A

01-219
01-2064
01-2068
01-4055
01-10042
01-10043
01-10045
01-10620
01-10621A
01-10621B
01-10622
01-10623
21-02156
21-01455
21-10560
21-13161
25-07004