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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

Case No. 39576

)
) **Subcase Nos.: Attachment A**
)
) **MEMORANDUM IN SUPPORT OF**
) **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”), and the City of Pocatello (hereinafter collectively referred to as “Parties”) by and through their undersigned attorneys of record, and pursuant to Administrative Order 1 and Rule 60(b)(6) of the Idaho Rules of Civil Procedure, hereby submit this memorandum in support of the joint motion to modify the partial decrees listed at Attachment A.

The Parties seek to modify the partial decrees for the limited and narrow purpose of including remarks that are necessary for the efficient administration of the water rights as part of a settlement of ongoing disputes concerning the period of use of the Basin 01 storage water rights for on-stream federal reservoirs.

INTRODUCTION

The administration of federal on-stream storage water rights in Idaho has resulted in various disputes and litigation, both within and outside the Snake River Basin Adjudication (SRBA). *See In re SRBA (Basin-Wide Issue 17)*, 157 Idaho 385 (2014). Notably, spaceholders in Basin 63 recently settled their “fill / refill” dispute, and entered into a global stipulation to resolve ongoing litigation before the SRBA Court and the Idaho Supreme Court. *See Stipulation* (Subcase Nos. 63-33732 et al.) (July 2, 2018). The Basin 63 settlement was further implemented through legislation and the SRBA Court’s recent orders granting various motions. *See House Bill 1*, 65th Legislature, 1st Reg. Session 2019; *Order Granting Motion to Alter or Amend Partial Decrees* (Subcase Nos. 63-303 et al., July 19, 2019); *Order Granting Motion to Decree Water*

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

Right No. 63-33734B (July 19, 2019); and *Order Granting Motion to Disallow* (Subcase Nos. 63-33732 et al., July 19, 2019). The resolution of the referenced Basin 63 dispute also included adding to the underlying decrees a provision that specifically defined the annual timing for storage reset. Whereas the “base” storage water rights in Basin 63 were decreed with a “1/1 to 12/31” season of use, the fall storage “reset” remark was added to the Basin 63 water rights to clarify and efficiently administer the water rights consistent with historical practice. Like water rights that were the subject of the Basin 63 action on “reset”, the water rights that are the subject of this request for relief were similarly decreed without a “reset” remark and, until recently, Water District 01 “reset” storage amounts in the fall.

Spaceholders in Basin 01 settled late “refill” storage water right claims in 2015. Although the Basin 01 “refill” settlement addressed most issues related to Water District 01 storage administrative practices that had not previously been resolved, the partial decrees did not include defined provisions concerning fall “reset”, or how the water rights are actually administered between calendar years. Further, the partial decree for storage water right 01-219 (Lake Walcott) omitted a previously decreed and licensed 2,500 cfs diversion rate limitation, which further complicated reset administration in the fall of 2017 and resulted in a departure from prior administration.²

The Director interpreted the decrees that are the subject of this motion to provide for reset on January 1, employing the “period of use” provision (1/1 to 12/31) in the absence of a decreed reset remark. This interpretation deviated from prior administration and resulted in a dispute before the Department. The Parties have reached a settlement on the “reset” issues to clarify and

² See Ex. A to *Declaration of Travis L. Thompson* (hereinafter “*Thompson Dec.*”) (Director Spackman letter to Lyle Swank, brief explanation of administration in the fall of 2017).

further define the water rights. This joint motion seeks to implement the settlement by requesting limited modification of the partial decrees, consistent with prior administrative practice to ensure efficient and certain administration moving forward. The limited modification to the partial decrees is supported by all undersigned spaceholders and will avoid costly and protracted litigation, thus ensuring consistent and effective water right administration for future generations.

FACTUAL / PROCEDURAL BACKGROUND

Issues surrounding federal on-stream storage reservoirs, their development, and the administration of the related water rights have arisen before this Court in a variety of cases. *See generally, In re SRBA (Basin-Wide Issue 17)*, 157 Idaho 385 (2014); *Memorandum Decision*, Subcase No. 00-91017 (Basin Wide Issue 17, March 20, 2013); *Motion for Order Decreeing Water Rights*, Subcase Nos. 01-219 et al. (Jan. 30, 2015); *Order of Partial Decree*, Subcase Nos. 01-219 et al. (Aug. 17, 2016); *Memorandum Decision and Order on Challenge and Order of Recommitment to Special Master*, Subcase Nos. 63-33732 et al. (Sept. 1, 2016); *Memorandum Decision and Order*, Case No. CV-WA-2015-21376, 4th Jud. Dist, Ada County Dist. Ct. (Sept. 1, 2016); *Stipulation*, Subcase Nos. 63-33732 et al. (July 2, 2018).

For purposes of storage water rights in Basin 01, parties filed a global stipulation in January 2015. *See Stipulation*, Ex. A to *Motion for Order Decreeing Water Rights*, Subcase Nos. 01-219 et al. (Jan. 30, 2015). This stipulation addressed the form of partial decrees for the Basin 01 storage water rights, including certain late claims that resolved the “fill / refill” dispute. *See id.* Similar to other federal on-stream storage water rights throughout the state, the “period of use” element was agreed to be “1/1 to 12/31.” However, Water District 01 did not and has not administered the storage water rights to fill the annual volume quantity element on a calendar

year (“1/1 to 12/31”) basis and the “refill” settlement did not resolve the issue of reservoir “reset” accounting. *See generally, Memorandum in Support of Surface Water Coalition’s Motion to Decree General Provision*, Subcase Nos. 01-219 et al. (May 15, 2017); *see also*, Ex. C to *Thompson Dec.* (Dec. 1, 2017, Staff Memorandum “*Olenichak Report*”).

Since the development of the reservoirs in the Upper Snake River Basin in the early and mid-twentieth century, the U.S. Bureau of Reclamation (Reclamation) and Water District 01 have accounted for the accrual of storage to start in the fall to provide reservoir spaceholders with the greatest opportunity to receive a full storage allocation for the following irrigation season. Spaceholders accepted this type of administration as the means to maximize reservoir storage for subsequent beneficial uses.

This practice continued after Water District 01 implemented a computerized accounting program in the late 1970s. Since at least 1997, the district has implemented fall storage accounting as a “reset” of the storage water right accounts. *See Olenichak Report*, Ex. C to *Thompson Dec.* The “reset” of storage accounts puts the reservoirs in an administrative position to begin storing water in priority before January 1st each year (i.e. in the fall when the irrigation season winds down).

The partial decrees issued by this Court in 2016 did not contain any remarks concerning “reset” administration or when the Watermaster would begin to distribute water in priority during the year. Further, the partial decree for 01-219 for Lake Walcott removed a previously decreed and licensed diversion rate of 2,500 cfs.

Following entry of the global stipulation referred to above, and the Court’s finalizing of the partial decrees, the Parties began negotiating the “reset” issue, attempting to find a final resolution to ensure efficient administration and a method to continue maximizing storage of

available water for spaceholder use. The Parties approached the Court on the matter and the Court issued an *Order on Mediation* on February 22, 2017. Subsequent to unsuccessful negotiations, the Surface Water Coalition filed a motion to decree a general provision on the issue. The Court dismissed the motion without prejudice on jurisdictional grounds. *See Order Sua Sponte Dismissing Motion Without Prejudice*, Subcase Nos. 01-219 et al. (May 18, 2017).

In August of 2017, Milner Irrigation District sent a letter to the Director inquiring how the Lake Walcott storage water right (1-219) with a 1909 priority would be administered against Milner's 1916 natural flow water right (1-17). *See Ex. B to Thompson Dec.* With the removal of the 2,500 cfs diversion rate limitation in the 1-219 partial decree, administration to the 1909 storage right resulted in that right receiving more natural flow than it had historically, depriving Milner's 1916 natural flow right of water that had previously been available for irrigation use at the end of the season. By the same token, as the *Olenichak Report* at pages 4 - 5 describes, resetting annual storage accounts in the early fall and limiting the 01-219 water right to 2,500 cfs does not interfere with the Lake Walcott storage right and enhances the likelihood that other more junior storage rights will fill reliably. *See Ex. C to Thompson Dec.*

Rather than responding to the letter, the Director initiated a contested case before the agency. *See Ex. D to Thompson Dec.* The various Parties to this joint motion intervened in that contested case. Soon after the contested case was initiated, the Director instructed the Watermaster to administer the storage water rights based upon the decreed "1/1 to 12/31" period of use. *See Ex. A to Thompson Dec.* The Director's instructions departed from prior administration.

During the course of the contested case, pursuant to a Director's scheduling order, the Parties briefed their respective legal positions regarding the decretal effect of the calendar year

“season of use,” and also continued negotiations. The Parties then reached an interim resolution for 2018 before any decision by the Director on the legal effect of the “season of use” decree provisions. *See* Ex. E to *Thompson Dec.* The Director approved the interim stipulation for 2018 and temporarily stayed the contested case. *See* Ex. F to *Thompson Dec.*

In early 2019 the Parties executed a permanent Stipulation (“Stipulated Settlement”) that identifies the form of the remarks the Parties seek to include through the present motion. *See* Ex. G to *Thompson Dec.*; *see also Joint Motion* filed together herewith. At a status conference the Director noted concern with approving the Stipulated Settlement given the relation to the decreed Lake Walcott storage water right (01-219). Consequently, the Parties reached another interim stipulation for purposes of 2019 administration only. *See* Ex. H to *Thompson Dec.* In his approval of the 2019 interim stipulation, the Director specifically recognized that he would stay the administrative proceeding while the Parties pursued the present relief in the SRBA Court:

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the contested case in this matter is STAYED until issuance of a decision from the SRBA Court in relation to the subordination of Reclamation’s Lake Walcott water right.

See Interlocutory Order Accepting 2019 Settlement and Extending Stay Order (Docket No. P-WRA-2017-002, Sept. 11, 2019); Ex. I to *Thompson Dec.*

Based on the facts set forth above, the Parties are filing the present motion to effectuate the Stipulated Settlement which would further resolve the pending contested case before IDWR. Seeking relief through this Court is appropriate and ensures compliance with the McCarran Amendment relative to the proposed changes to the storage water rights to which legal title is held by the United States (Bureau of Reclamation).

STANDARD OF REVIEW

The SRBA Court's administrative rules provide that "[p]arties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b)." *Administrative Order No. 1*, § 14(d). Idaho Rule of Procedure 60(b)(6) authorizes a court to set aside and modify a partial decree for "any other reason that justifies relief." I.R.C.P. 60(b)(6). Moreover, while "[t]here is no express time limit for an independent action to relieve a party from judgment," such an action must be brought within a "reasonable time." See I.R.C.P. 60(c)(1); *Waller v. Dept. of Health & Welfare*, 146 Idaho 234, 239-240 (2008) (internal quotations omitted). "Rule 60(b)(6) may not be used as an end-run" around reasonable time limits, but "is applicable whenever 'such action is appropriate to accomplish justice.'" *First Security Bank of Idaho, N.A. v. Stauffer*, 112 Idaho 133, 143, 730 P.2d 1053, 1063 (1986), citing *Klapprott v. United States*, 335 U.S. 601, 615 (1949).

Motions to set aside final judgments are governed by equitable principles. *Flood v. Katz*, 143 Idaho 454, 457 (2006). The decision to grant such a motion is committed to the trial court's discretion. See *Eden v. State of Idaho*, 164 Idaho 241, 248 (2018); *Order Granting Motion to Alter or Amend* (Subcase Nos. 63-303 et al., July 19, 2019) ("*Basin 63 Order*"). A trial court's decision will be upheld if the court: (1) correctly perceives the issue is discretionary; (2) acts within the bounds of its discretion and consistent with the applicable legal standards; and (3) reaches its decision through an exercise of reason. See *id.*; see also, *Waller v. State, Dep't of Health & Welfare*, 146 Idaho 234, 237 (2008).

A determination under Rule 60(b) "turns largely on questions of fact to be determined by the trial court." *Id.* Further, the Idaho Supreme Court has instructed that Rule 60(b) motions should "be granted only on a showing of unique and compelling circumstances justifying relief." *Eden*, 164 Idaho at 252. The unique and compelling circumstances surrounding the

administration of storage water rights in Basin 01, including the recent settlement of the “reset” dispute, justify granting the Parties’ motion for limited relief. The Parties submit that this final resolution will result in efficient and certain administration of the storage rights consistent with prior administrative practice, to the benefit of all spaceholders in Basin 01. The permanent resolution will prevent future disputes and ensure that reservoir storage operations continue consistent with historic administrative practice.

ARGUMENT

I. The Resolution of the Storage “Reset” Dispute Justifies Relief Under Rule 60(b)(6).

Although the Supreme Court has noted that relief under Rule 60(b)(6) is granted “infrequently”, the facts in this case present “unique and compelling circumstances” that justify the requested limited relief. *Miller v. Haller*, 129 Idaho 345, 348 (1996). Moreover, given the critical role storage serves for water users in the Upper Snake River Basin and the State of Idaho as a whole, the Parties call upon the Court’s “equitable considerations” to address and grant the motion.

A. History of Storage Reset in Water District 01.

First, the administration of water rights for Water District 01 on-stream federal reservoirs is unique given their operation and interface with the district’s water rights accounting program. Water right administration in the Upper Snake River Basin is dynamic, and complicated by multiple on-stream reservoirs. Reclamation coordinates reservoir operations for irrigation storage and flood control. Development of the Palisades Reservoir and other assorted projects throughout the mid-twentieth-century further complicated water right administration and operations of the pre-existing reservoirs. *See generally, Surface Water Coalition’s Factual Background Addendum* (Subcase Nos. 01-219 et al., May 15, 2017).

Notably, development of the Palisades Project required execution of new contracts between spaceholders and Reclamation which included specific administrative provisions that were ultimately confirmed in the *Eagle Decrees*. *See id.* The substance of those provisions was then incorporated through specific remarks in the SRBA partial decrees. *See Stipulation*, Ex. A to *Motion for Order Decreeing Water Rights*, Subcase Nos. 01-219 et al. (Jan. 30, 2015). For example, although the American Falls Reservoir has a water right senior to Palisades Reservoir, under certain scenarios, water stored under the senior American Falls' right may actually be diverted and physically held in Palisades Reservoir. This practice allows Reclamation to hold water as high in the system as possible to maximize overall basin storage.

This system of coordinated operations and administration is dependent upon fall reservoir "reset" whereby the Watermaster distributes water to the storage rights in *advance* of the following calendar year to maximize storage for the next season's irrigation use. In the absence of fall reset, water that could otherwise be stored is lost to the system – this is why neither Reclamation nor the Watermaster have ever waited until January 1st to begin storing water in the reservoir system. Rather, water that is available for storage in the fall is captured and stored for subsequent irrigation use, which is a critical operation relied upon by irrigation projects in Water District 01. *See e.g., In re SRBA (Basin Wide Issue 17)*, 157 Idaho 385, 389 (2014) ("Water diverted and stored pursuant to a storage water right need not be put to beneficial use immediately, but may be stored for a period of time prior to the end use."). This historical administrative storage practice effectively and efficiently administers storage water rights for the benefit of all spaceholders. Indeed, Water District 01 has historically "reset" the storage water rights at various dates in the fall for well over 30 years for purposes of water right

administration. *See SWC Memo.* at 6-10 (Subcase Nos. 01-219 et al., May 15, 2017); *see also, Olenichak Report* at 2-3, Ex. C to *Thompson Dec.*

The final partial decrees in the SRBA did not contain a remark clarifying the timing of reset administration. As a result, the Director recently instructed the Watermaster to delay storage reset in priority until January 1st. The Director's basis for this administrative direction was the decreed "season of use" element of "1/1 to 12/31". *See Ex. A to Thompson Dec.* This change in administration resulted from Milner Irrigation District's letter and the Director then initiating a contested case which threatened the certainty and finality that is critical for administration of the Basin 01 storage water rights. Through significant efforts, the Parties reached interim resolutions on the reset issue in 2018 and 2019, which were temporarily accepted by the Director.

B. Lake Walcott Storage Water Right (1-219).

The storage water right for Lake Walcott was originally decreed as part of the 1913 *Foster Decree*. *See Ex. J to Thompson Dec.* The court granted Reclamation the right to "the use of waters of the natural flow of Snake River for the purpose of filling Lake Walcott Reservoir above Milner Dam, said water to be thereafter drawn out and used for irrigation and domestic purposes in the following amount from the following date: 2,500 second-feet from December 14, 1909, hereby designated as Right No. 10." *Id.* The water right was later licensed by IDWR in 1921. *See Ex. K. to Thompson Dec.*

Prior to 1978, Lake Walcott was typically drawn down in the fall and early winter to protect the dam from icing conditions. *See Declaration of David B. Shaw* (Subcase Nos. 01-219 et al., May 15, 2017). Dave Shaw, a consultant for the Surface Water Coalition, researched IDWR and Water District 01 records and could not find any record of the Lake Walcott storage

water right being exercised near the end of the irrigation season. *See id.* Further, the reservoir normally filled in March but could that could vary between February and April. *See id.* Tony Olenichak, current Water District 01 Watermaster, described the historic administration of storage water right 01-219 as follows:

Prior to 1978, natural flow was distributed to junior irrigation rights ahead of the 1909-priority Lake Walcott storage water right. This included distributions to Milner Irrigation District's 1916 priority and AFRD2's 1921 priority water rights.

From 1978 to 1987, following the reset of the reservoir water right accrual volumes on November 1st, natural flow was distributed to the Lake Walcott storage water right accrual volume ahead of water right demand that was junior to the 1909 priority. From 1988 through 2016, the Lake Walcott water right accrual volume was reset on or before October 1st preventing natural flow from being distributed to junior water rights ahead of the senior Lake Walcott storage water right until the Lake Walcott water right annual volume was satisfied.

In the water right accounting from 1978 through 2010, the natural flow distributed to the 1909 Lake Walcott storage water right was limited to a flow rate of 2500 cfs while its water right annual volume was being filled in September, October and/or November. If the natural flow available to the 1909 priority was in excess of the 2500 cfs being distributed to the 1909 Lake Walcott water right, the amount in excess of 2500 cfs was distributed to the demand by water rights with priorities between 1909 and 1921, including Milner Irrigation District's 1916 irrigation water right. If the natural flow exceeded both the 2500 cfs distributed to the Lake Walcott right and the amount distributed to water rights with priorities between 1909 and 1921, the remaining natural flow was distributed to AFRD2 and/or other 1921 priority reservoir water rights accruing natural flow in September, October, and/or November.

The Lake Walcott storage right was not decreed with the 2500 cfs daily flow rate limitation in the Snake River Basin Adjudication. The 2500 cfs limit was removed from the water right accounting in 2011. The effect of removing the flow rate limitation prevented or delayed the distribution of natural flow to Milner Irrigation District's and AFRD2's junior water rights until the senior Lake Walcott water right's annual volume was completely satisfied, usually sometime in October.

See Olenichak Report at 4; Ex. C to Thompson Dec.

As noted above, the history of administration of the Lake Walcott storage water right is varied. Notably, when the water right was not partially decreed with the 2,500 cfs diversion rate limitation for the quantity element, that rate was removed from the WD01 accounting program. During this time the Parties had been litigating various issues related to the storage water rights, including administrative provisions related to the *Eagle Decrees* and the “fill / refill” dispute. Through extensive negotiations, the Parties ultimately resolved those issues and entered into a global stipulation which was then approved by the Court through partial decrees entered in August 2016. As noted, the Parties did not include a fall “storage reset” provision or address the impact of changed administration of the Lake Walcott storage right.

The Parties now seek the addition of remarks to the decrees identified in Attachment A that will require “reset” of reservoir storage on September 15th annually, earlier than the January 1st date the Director ordered in 2017. In addition, the Parties seek a remark on water right 1-219 that will limit the Lake Walcott storage right to diversions of no more than 2,500 cfs from September 15th to and through October 15th. The underlying decrees are silent on the “reset” date and the addition of a remark specifying “reset” of reservoir storage for September 15th will provide administrative certainty.

However, in the absence of a specific remark, the Department and WD01 do not have discretion to limit Lake Walcott diversions to 2,500 cfs from September 15-October 15 because that operational limitation alters an element of the water right. *See City of Blackfoot v. Spackman*, 162 Idaho 302, 308 (2017). Furthermore, even if the Department were inclined to honor the Parties’ stipulation and limit Lake Walcott diversions to 2,500 cfs from September 15-October 15, Reclamation is not bound by the Parties’ Stipulated Settlement before the Idaho Department of Water Resources. The agreed-upon limitation of a decreed water right cannot be

enforced against the United States by means of an administrative order, and, therefore, the requested modifications to the partial decrees by this Court are necessary to ensure the efficient administration of storage water rights for on-stream federal reservoirs in Water District 01. *See*, July 8, 2019 Letter from Jeremiah Williamson to Gary Spackman; Ex. L to *Thompson Dec.*

Further, as previously determined by the Idaho Supreme Court:

[B]y reason of the interlocking of adjudicated rights on any stream system, any order or action affecting one right affects all such rights. [Citation omitted.] Indeed, '[e]ach water rights claim by its very nature raise[s] issues inter se as to all such parties for the determination of one claim necessarily affects the amount available for other claims.

Eden, 164 Idaho at 252-253, *quoting Nevada v. United States*, 463 U.S. 110, 140 (1983).

Therefore, an agreement among the Parties that does not bind Reclamation in its administration of storage water rights necessarily contravenes the underlying policy of the McCarran Amendment favoring a unified determination of water rights and acknowledging the essential need for finality. *State v. Nelson*, 131 Idaho 12, 16, 951 P.2d 943, 947 (1998) ("Finality in water rights is essential."). To ensure certainty in administration of the water rights, including those held by the United States, partial decree 01-219 should be modified accordingly.

In sum, the Parties have reached a good faith settlement concerning the diversion rate of the Lake Walcott storage right. The limited remark would clarify that the 2,500 cfs limitation would be in effect for 30 days at the beginning of the fall reset period which would be consistent with historic administration to the benefit of water rights junior to 1909, including rights held by Milner Irrigation District and AFRD#2. Limiting the diversion rate remark to this period is appropriate given historical administration and the unique location of Lake Walcott in the reservoir system. The stipulated remark dovetails with the proposed remark concerning storage reset and is necessary for the efficient administration of the Basin 01 storage water rights.

C. Stipulated Storage Reset Provisions.

Despite their differences, the Parties reached the Stipulated Settlement that would provide final resolution to the storage “reset” dispute.³ See Ex. G to *Thompson Dec.* Settling this dispute provides an important framework and certainty for administration and operation of the Basin 01 on-stream federal reservoirs. The settlement is a fair and equitable resolution of the dispute and provides Water District 01 and IDWR with a permanent administrative framework moving forward. Memorializing the agreed to administration in remarks on the storage water right decrees is paramount given the history of the Basin 01 operations of federal on-stream reservoirs and the fact the “reset” date has varied over time. The proposed remarks would ensure finality and certainty of that date going forward and protect existing storage operations.

The Idaho Supreme Court has acknowledged the critical role that reservoirs play in an arid state like Idaho:

Idaho's extensive agricultural economy would not exist but for the vast systems of irrigation canals and ditches which artificially deliver stored or naturally flowing water from Idaho's rivers and streams into abundant fields of growing crops. Many of these irrigation systems depend on dams which divert naturally flowing water, storing it in reservoirs and later releasing it for use on irrigated lands through canals and ditches. These artificial water storage systems serve an additional need for flood control, power generation, recreation, and provide beneficial environments for fish and wildlife.

Kunz v. Utah Power & Light Co., 117 Idaho 901, 904 (1990).

The Upper Snake River Basin reservoirs serve a multitude of purposes with unique and complicated administrative paradigms. The fact that the fall reset date has varied through administration demonstrates remarks are needed to further define and clarify the season of use for future certainty. Given the “unique and compelling circumstances” of this case, and the

³ The Director approved the interim stipulation for purposes of 2018 administration where he agreed the Watermaster would administer based upon the Parties’ agreement. See Ex. F to *Thompson Dec.*

importance of ensuring maximum storage of water in Basin 01 consistent with prior administrative practice, the stipulated remarks justify granting relief under Rule 60(b)(6).

D. The Scope of this Dispute Mirrors that in Basin 63, and Therefore Limited Rule 60 Relief is Appropriate Here.

Similar to resolution of the dispute concerning storage water rights in Basin 63, the Parties submit the same reasons apply to granting the limited relief requested in the present motion. The Parties are mindful of the finality of the Court's *Final Unified Decree* and the certainty it provides. However, the Parties are not seeking a "wholesale reopening" of the storage water rights. Instead, the Parties submit that granting the motion for the limited purposes requested will resolve the outstanding litigation and provide certainty in water right administration into the future. Furthermore, obtaining relief through the SRBA Court is necessary to ensure that Reclamation is bound by the settlement terms as provided by the McCarran Amendment.⁴ Similar to resolving the "fill / refill" dispute in Basin 63, this motion will effectuate the Parties' resolution of the outstanding dispute on storage "reset." *See Basin 63 Order* at 4 ("The issue of federal reservoir 'fill' and/or 'refill' in Basin 63 has been one of the more complex and challenging issues addressed by the Court in the SRBA. The complexity of the issue has resulted in protracted litigation in both judicial and administrative proceedings. The settlement, which the Court finds to be a fair and appropriate resolution, is unique and compelling in that it is comprehensive of both the judicial and administrative proceedings.").

The Parties submit that the limited and narrow relief requested here is appropriate and will provide a comprehensive resolution of the outstanding dispute. Rather than leave

⁴ Reclamation has not intervened in the administrative contested case before IDWR and has specifically advised that changes to the Lake Walcott storage water right (01-219) must be obtained through the SRBA Court. *See Ex. L to Thompson Dec.*

administration clouded with undefined and unclarified procedure, the requested remarks provide important limitations on the storage water rights consistent with historic administration. Further, given the varied reset dates in the past, the remarks and will provide a permanent resolution that will direct the Watermaster and water users into the future. Similar to the “reset” remark recently decreed in Basin 63, here the Parties’ proposed reset remark “is narrow in scope and necessary for the efficient administration” of all storage water rights in Basin 01.

For these reasons, the Parties respectfully request the Court to grant the motion for the limited purpose of including the “reset” remarks as well as the quantity remark for water right 01-219.

II. The Stipulated Remarks are Necessary for Efficient Administration.

Due to the lack of a “reset” date in the partial decrees, the Director recently administered reset of the storage water rights that are the subject of this motion by reference to the “period of use” element of the partial decrees, specifying that the storage rights may be used from “1/1 to 12/31”. *See Ex. A to Thompson Dec.* However, in the absence of a remark clarifying or defining how the season of use element should be translated into administrative action, the Director’s administration has departed from historic practices and led to disputes between the Parties.

The adjudication code instructs that a director’s report shall include “such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director.” I.C. § 42-1411(2)(j). With respect to a general provision, which includes similar criteria for decreeing a remark, the Idaho Supreme Court has found:

A general provision is a provision that is included in a water right decree regarding the administration of water rights that applies generally to water rights, is not an element of the water right, or is necessary for the efficient administration

of the water rights decreed. Administering a water right is not a static business. While some administrative provisions would clearly apply to a certain type of water right in certain circumstances other administrative provisions clearly would not apply to a certain type of water right and every circumstance.

* * *

Idaho Code § 42-1412(6) instructs that a general provision should be included in a water right decree if such general provision is “necessary” to define or efficiently administer water rights. Whether a general provision is “necessary” depends upon the specific general provision at issue and involves a question of fact, (defining the proposed general provision and the circumstances of its application), and a question of law (determining whether the general provision facilitates the definition or efficient administration of water rights in a decree). A general provision is “necessary” if it is required to define the water right being decreed or to efficiently administer water rights in a water right decree.

A&B Irr. Dist. v. Idaho Cons. League, 131 Idaho 411, 414 (1997).

The Parties submit the partial decrees should be set aside and re-opened only for the limited purpose of including the stipulated “reset” remarks to clarify the period of use (and quantity element for 01-219). The proposed remarks will ensure efficient and certain administration of the storage water rights’ season of use moving forward. The remarks will prevent future confusion and misinterpretation by the Watermaster or IDWR and provide for administration consistent with the spaceholders’ and water users’ expectations. Specifically, the remarks will allow for storage to begin in the fall, rather than January 1st, to the benefit of all spaceholders.

Modifying the existing decrees is also consistent with the Basin 63 settlement and Order granted pursuant to Rule 60(b)(6) allowing for limited amendment of certain partial decrees to provide for a “reset” remark for similar administration of the on-stream storage water rights

previously decreed in that basin. *See Basin 63 Order* at 4-5.⁵ Similar to Basin 63, “unique and compelling circumstances” exist here because the settlement proposed by the Parties for Water District 01 is narrow in scope, is necessary for the efficient administration of the storage rights, is comprehensive of both the lengthy and complex judicial and administrative proceedings, is to the satisfaction of all parties to such proceedings, and is without opposition from any other water user. *Id.* Such “unique and compelling circumstances” justify relief under Rule 60(b)(6).

III. The Motion Meets the “Reasonable Time” Standard Under Rule 60(c)(1).

Idaho’s civil rules require the present motion to be “made within a reasonable time.” I.R.C.P. 60(c)(1). The Parties submit the Court should evaluate “reasonableness” based not on the time elapsed since the issuance of the involved partial decrees, but rather since the shift in the administration of the subject water rights that occurred at the end of 2017. *See Ex. A to Thompson Dec.* The timing of the present motion is “reasonable” given the past two years of negotiations, including court-ordered mediation.⁶ While the partial decrees were first entered in the summer of 2016, the Director did not order the Watermaster to follow the decreed season of use until the fall of 2017. Although reaching the Stipulated Settlement took several months following the initiation of the contested case, the Parties participated in good faith and worked together to reach a fair and equitable resolution.

⁵ Similar to the Basin 01 partial decrees, the storage water right decrees in Basin 63 were decreed with a “1/1 to 12/31” season of use without any clarifying remarks. Like the Basin 01 water rights, the Basin 63 decrees have been administered to begin filling in the fall, not just on January 1st of each year.

⁶ The Court originally noted that parties to the mediation “should they so desire” file any post-judgment motions prior to May 16, 2017. *See Order on Mediation; Order Setting Status Conference.* Although the Surface Water Coalition filed such a motion for a general provision, that motion was denied on jurisdictional grounds without prejudice. The Director’s change in administration was not evident by that date and therefore it was reasonable for the Parties to file the present motion after several more months of negotiations and successful settlement.

The changed administration and interaction with WD01's accounting program is a complex issue to research, evaluate, and understand. Working with various federal and state agencies, including their approval processes, also presents unique challenges when reaching a settlement. Given the circumstances and issues involved, the Parties submit the motion is made within a "reasonable time" and respectfully request the Court to grant the same.

CONCLUSION

The Parties seek limited relief to ensure consistent and certain administration of the Basin 01 storage water rights in the future. The fact the fall reset date has changed over time in the face of a "1/1 to 12/31" season of use is further reason to provide further definition and clarity through this Court's jurisdiction. The Parties' settlement of the storage "reset" dispute is a fair and equitable solution that ensures continued efficient administration. Although the parties resolved the "fill / refill" matter in Basin 01 back in 2015, negotiations and disputes over the "reset" of the storage rights have persisted since that time, including through litigation initiated before IDWR in the fall of 2017.

The Parties submit their settlement presents "unique and compelling" circumstances that justify relief under Rule 60(b)(6). The requested remarks are necessary for efficient administration of the storage water rights and will provide certainty that will benefit water users for generations to come. The Parties respectfully request the Court to grant the motion.

DATED this 30th day of October, 2019.

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for

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CERTIFICATE OF SERVICE

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

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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
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21-13161
25-07004