

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
tlth@idahowaters.com
jreagan@idahowaters.com

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*

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

**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**
)
) **DECLARATION OF TRAVIS L.**
) **THOMPSON IN SUPPORT OF**
) **JOINT MOTION TO MODIFY**
) **PARTIAL DECREES FOR**
) **PURPOSE OF DIVERSION RATE**
) **AND "RESET" ADMINISTRATIVE**
) **REMARKS**
)
)

I, Travis L. Thompson, hereby declare and state as follows:

1. I am an attorney representing A&B Irrigation District et al. in the above-captioned matter. I am over the age of 18 and state the following based upon my own personal knowledge.

2. Attached hereto as **Exhibit A** is a true and correct copy of the October 27, 2017 letter from Director Gary Spackman to Watermaster Lyle Swank.

3. Attached hereto as **Exhibit B** is a true and correct copy of my August 17, 2017 letter to Director Gary Spackman and Watermaster Lyle Swank.

4. Attached hereto as **Exhibit C** is a true and correct copy of the *Reset Date Staff Memorandum (December 1, 2017)* prepared by Tony Olenichak (Water District 01). The memorandum was filed in the contested case before IDWR entitled *In the Matter of the Petition Regarding Storage Reset in Water District 01 Filed by Milner Irrigation District* (Docket No. P-WRA-2017-002). Exhibits D through I below were also filed in the same proceeding.

5. Attached hereto as **Exhibit D** is a true and correct copy of the *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (dated October 5, 2017).

6. Attached hereto as **Exhibit E** is a true and correct copy of the *Interim Stipulation and Motion for Order to Approve* (May 22, 2018).

7. Attached hereto as **Exhibit F** is a true and correct copy of the *Interlocutory Order Accepting 2018 Settlement* (June 1, 2018).

8. Attached hereto as **Exhibit G** is a true and correct copy of the *Stipulation and Joint Motion for Order Approving Stipulation / Joint Motion for Stay* (April 10, 2019).

9. Attached hereto as **Exhibit H** is a true and correct copy of the *Interim 2019 Stipulation and Joint Motion for Order Approving Stipulation / Joint Motion for Stay* (August 23, 2019). I have excluded the signature pages and certificate of service from this document for efficiency and to save copies.

10. Attached hereto as **Exhibit I** is a true and correct copy of the *Interlocutory Order Accepting 2019 Settlement and Extending Stay Order* (September 11, 2019).

11. Attached hereto as **Exhibit J** is a true and correct copy of excerpts of the *Foster Decree (Twin Falls Canal Co. v. Charles N. Foster et al., Twin Falls County Dist. Ct., Fourth Jud. Dist., June 13, 1913, Judge Edward A. Walters)*.

12. Attached hereto as **Exhibit K** is a true and correct copy of water right license no. 5799 issued by IDWR on February 7, 1921.

13. Attached hereto as **Exhibit L** is a true and correct copy of the July 8, 2019 letter from Jeremiah I. Williamson to Director Gary Spackman.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED this 30th day of October, 2019.



Travis L. Thompson

Attorneys for A&B Irrigation Dist. et al.

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 2019, I served a true and correct copy of the foregoing **DECLARATION OF TRAVIS L. THOMPSON IN SUPPORT OF 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

Exhibit A



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

October 27, 2017

Transmitted via U.S. Mail and E-mail

Lyle Swank
Water District 01 Watermaster
900 N. Skyline Drive Suite A
Idaho Falls, ID 83402-1718
lyle.swank@idwr.idaho.gov

Re: Reset of Reservoir Water Rights and Recharge

Dear Lyle,

The Bureau of Reclamation has informed IDWR and spaceholders that adherence to the winter water savings provisions of storage contracts will not be required during the fall and winter of 2017/2018 and the winter and spring of 2017/2018. The Bureau of Reclamation anticipates that 800 cubic feet per second (cfs) will be available to divert from the Snake River above American Falls Reservoir for managed recharge.

I understand that all of the water rights authorizing onstream storage of Snake River water and tributary water (hereafter referred to as "Snake River water") were satisfied in 2017. I also understand that Water District 01 staff reset the onstream Snake River storage water rights to again be eligible for distribution for additional storage on September 15, 2017. As a result, Water District 01 has been distributing available natural flow to the Snake River onstream storage water rights.

Currently, the water rights authorizing storage of water in American Falls Reservoir have not been satisfied.

The decreed water rights authorizing onstream storage of Snake River water identify a season of use of January 1 through December 31. The question of how the season of use defined by the decrees interacts with a reset date earlier than January 1 is the subject of a contested case now pending before the Director.

Without having received evidence in the contested case to determine when a reset date might be appropriate, the Director must consult the four corners of the storage right decrees to determine the season of use for these rights. The decrees identify a season of use of January 1 through December 31. As a result, the Water District 01 should not have reset the reservoir rights to start accruing again prior to January 1.

Lyle Swank
Water District 01 Watermaster
October 27, 2017
Page 2

This letter instructs you to recharacterize any flow accrued to the Snake River Reservoirs subsequent to September 15, 2017, as natural flow that was available for diversion by junior water rights. Delivery of water to satisfy the onstream Snake River Reservoir water rights shall begin on January 1, 2018.

If you have questions about this instruction, please call me. Thanks.

Sincerely,



Gary Spackman

cc: Albert Lockwood, Chairman, Committee of Nine
Brian Patton, IDWR

Exhibit B

*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Scott A. Magnuson*



163 Second Ave. West
P.O. Box 63
Twin Falls, ID 83303-0063
(208) 733-0700 telephone
(208) 735-2444 facsimile

1010 W. Jefferson St., Suite 102
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

Travis L. Thompson
tltp@idahowaters.com

August 18, 2017

VIA EMAIL & U.S. MAIL

Director Gary Spackman
IDWR
322 E. Front St.
Boise, Idaho 83702-0098
gary.spackman@idwr.idaho.gov

Lyle Swank, Watermaster
Water District 01
900 N. Skyline Dr., Suite A
Idaho Falls, Idaho 83402-1718
lyle.swank@idwr.idaho.gov

Dear Director Spackman & Mr. Swank:

I am writing on behalf of my client the Milner Irrigation District (Milner) concerning anticipated surface water right administration this fall in Water District 01. This letter follows up on my October 7, 2014 letter on the same subject.

As you are aware various water users in Water District 01 have been negotiating and discussing the fall "storage reset" for purposes of water right administration in the context of the SRBA. The Court recently decreed the Basin 01 storage water rights last August. The Watermaster is bound to distribute water in accordance with the water right decrees pursuant to state law.

As we understand it, the Water District "resets" the storage water right accounts on September 15th each year for purposes of priority administration. In other words, when available natural flow exceeds the irrigation demand of senior water rights, the District distributes that water to storage water rights in priority, even if the right's storage volume had already filled once for the year.

Through our research and discussions it is now known that the priority date used for purposes of the "reset" administration has changed over time. It is our understanding the Water District now uses the Lake Walcott priority (12/14/1909) when water is distributed to storage in the fall. According to the current District accounting records the Lake Walcott storage right completely filled earlier in 2017. As such we are unaware of any law that would authorize the Water District to begin filling that water right in priority for a "second time" this calendar year (i.e. beginning on September 15th).

The administration is of particular interest to Milner because the reset to the Walcott priority has in effect curtailed Milner's natural flow water right 1-17 (November 14, 1916 priority date) in recent years. Instead of being allowed to divert available natural flow to deliver to its landowners, Milner has been forced to exhaust its storage water for those deliveries while the Water District distributes the natural flow to the Walcott storage right (for the second time in the same calendar year). Again, we are unaware of any statute, rule, or caselaw that would authorize such distribution.

The fall storage "reset" is not authorized in the current storage water right partial decrees, including the Lake Walcott storage right (1-219). Therefore, if the conditions arise this fall, we would request the Water District and Director ensure Milner receives the appropriate natural flow as required by Idaho law. We would specifically request a formal written response to this letter by **Friday September 1, 2017** so that further options can be pursued to protect Milner's water right if deemed necessary.

We appreciate your attention and timely response to this matter. Please call me at (208) 733-0700 if you have any questions.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

cc: (email only)
Walt Mullins, Milner
Lynn Harmon, AFRD#2
John Lind, BID
Dan Temple, A&B
Dan Davidson, MID
Kent Fletcher
John Simpson
Jerry Rigby

Exhibit C



IDWR DIRECTOR
GARY SPACKMAN

LYLE SWANK
WATERMASTER
Phone (208) 525-7172
Fax (208) 525 7177

State of Idaho
Water District 1
900 N Skyline Dr., Suite A
Idaho Falls, Idaho 83402-1718

MEMORANDUM

TO: Gary Spackman, Idaho Department of Water Resources Director
FROM: Tony Olenichak, Water District #1 Program Manager
DATE: December 1, 2017
RE: Reset Date Staff Memorandum

This memorandum was prepared in response to your Order, dated November 20, 2017, requesting a description and discussion of the procedures used by Water District 01 for resetting the accounting system's reservoir water right accrual volumes for federal onstream reservoirs. The memorandum addresses the history and reasons for choosing the procedures and outlines implications of using different procedures to determine appropriate reset dates.

Irrigation Season, Day of Allocation, Storage Season, and Reset Date Definitions

Natural flow is distributed to irrigation, storage, and other water rights according to the amounts of natural flow available to water right priorities each day of the year. When reservoir water right annual volumes have been completely satisfied, natural flow can no longer be distributed to the reservoir water rights until the annual volumes have been reset to enable distribution of natural flow to their water rights for the next annual period.

The irrigation season begins when water is first diverted for irrigation, usually sometime after the beginning date listed for the period-of-use on irrigation water rights. The irrigation season ends when water ceases to be put to beneficial use for irrigation on (or before) the ending date of the water right period-of-use. The irrigation season can last up to eight months and begin as early as mid-March and end as late as mid-November but is usually shorter in length depending on weather, crop types, location, and irrigation management.

The date when reservoir spaceholder storage allocations are issued during the irrigation season is called the Day of Allocation. The Day of Allocation closely coincides with the date of maximum reservoir system contents, usually occurring sometime between mid-May and mid-July. Three things must occur prior to the Day of Allocation: 1) Milner Spill ceases following the peak runoff; 2) The maximum physical reservoir system contents have occurred; and 3) The last day of distribution to unfilled reservoir water rights following the peak runoff has occurred. All system natural flow is distributed to water rights senior to reservoir water rights from the Day of Allocation to when the reservoir system approaches its minimum contents in late September or in October.

After the reservoir system reaches its minimum contents and irrigation demand subsides to less than the system's natural flow in September or October, the reservoir system's physical contents begin to increase, signaling the beginning of the storage season. The storage season ends on the following year's Day of Allocation after physical reservoir system contents have reached their maximums and natural flow subsides to a level that is insufficient to satisfy water right priorities equal, or junior, to the reservoir water right priorities. This approximate 10-month storage season extends from late-September to mid-July but is usually shorter during average or below-average water years, and longer during extremely wet years. The storage season overlaps the ending and beginning months of the irrigation season.

The date on which full reservoir water right accruals are reset is defined as the *reset date* in the water right accounting. The *reset date* determines the annual period natural flow can be distributed to previously filled reservoir water rights. For example, if the *reset date* is September 15th, the annual period natural flow can be distributed to reservoir water right volumes is from September 15th of the current year to September 14th of the following year. The primary purpose of the *reset date* is to signal when reservoir water rights filled on the *Day of Allocation* are allowed to come back into priority ahead of other junior water rights, including previously unfilled junior reservoir water rights.

History of Reset Dates in the Water Right Accounting

Prior to 1978, water rights were regulated by the Watermaster for only a portion of the calendar year. Water right regulation began when excess water spilling past Milner ceased and the reservoir system reached the maximum physical contents, usually occurring in late spring or early summer. Water right regulation ended when the total reservoir system contents began to increase and natural flow exceeded demand by irrigation water rights in September or October. The Watermaster did not distribute natural flow to reservoir water rights prior to 1978.

Continuing development of new water rights, new diversions, reservoirs, and the severe drought in 1977 prompted the need for stricter water right regulation. The previous accounting methods were insufficient to balance daily natural flow distributions with reservoir storage allocations, carryover, and new accrual to ensure the reservoir system's unused storage equaled the storage physically held in the reservoir system at the end of the *irrigation season*. As a result, the following actions occurred in 1978:

- According to Lyle Swank, the meeting minutes from the February 23, 1978 Committee of Nine Meeting show that Alan Robertson (IDWR Hydrology Section Manager) said, *"Regulation on a longer season will help fill reservoirs and late (water) rights will be charged storage"*.
- Resolution 1 adopted at the 1978 Water District 01 Annual Meeting stated, *"That the Watermaster be requested to make such changes in the established water distribution practices as will result in more accurate deliveries of natural flow and stored water, improved regulation procedures to assure deliveries of water supply and diversion records to the water users, and to assure that all water users are charged for water deliveries on an accurate and equitable basis."*
- Resolution 10 adopted at the 1978 Water District 01 Annual Meeting stated, *"Whereas it is in the best interest of the water users of Water District No. 1 to account for all diversions which might adversely affect any prior natural flow or storage diversions be it resolved that the Watermaster shall collect records of water diversions during the entire year."*

From this point forward, all water rights were regulated according to priorities for the entire calendar year. No distributions of natural flow to junior water rights were made ahead of other unfilled senior water rights.

The newly created year-round water right accounting necessitated the creation of a *reset date* following the *Day of Allocation* when filled reservoir water right accrual volumes were reset to allow distribution of natural flow to reservoir water rights for the next annual period. The *reset date* in the water right accounting for the years 1978 to 1987 was November 1st. During these ten years, Jackson Lake was limited to capturing a water volume less than its reservoir capacity for dam safety reasons. Because the water supply in those ten years was sufficient to fill the limited restricted Jackson Reservoir space in addition to filling downstream reservoirs, the *reset date* of November 1st initially used in the water right accounting received little attention.

The *reset date* received additional scrutiny during the drought year of 1988 when the reservoir system failed to fill. The effect of not resetting the reservoir water right accrual volumes at the beginning of the *storage season* in September or October resulted in a large volume of *unallocated storage* accumulating in the reservoir system. *Unallocated storage* occurs when daily natural flow is in excess of the amount of natural flow distributed to water rights, does not flow past Milner Dam, and does not accrue to a storage water right.

In 1988, in order to minimize the accrual of *unallocated storage* and distribute natural flow to reservoir water rights in priority in September and October, the *reset date* in the water right accounting was moved from November 1st to August 1st. Resetting reservoir water right accrual volumes after storage allocations were issued to reservoir spaceholders on the *Day of Allocation* at the end of the *storage season*, and resetting on (or before) the earliest reservoir water right came back into priority at the beginning of the *storage season*, ensured senior reservoir water rights were distributed natural flow ahead of junior reservoir water rights. Moving the *reset date* to an earlier date reduced the amount of *unallocated storage* accumulating in the reservoir system.

Reservoir water right accrual volumes were reset on October 1st during the 1989 *irrigation season* and were reset on August 15th during the 1990 *irrigation season*. Any date chosen for resetting reservoir water right accrual volumes that falls between the *Day of Allocation* and the day that the 1906 Jackson Lake water right comes back into priority near the end of the *irrigation season* results in identical distributions of natural flow. This was the case for the years 1988, 1989, and 1990. Choosing August 1st, August 15th, or October 1st as the *reset date* would have resulted in the exact same natural flow distribution in all three years because the *Day of Allocation* occurred before August 1st, and the 1906 Jackson Lake storage water right wasn't restored until after October 1st. From 1990 until 1997, an August 15th date continued to be used for resetting annual reservoir water right accrual volumes.

The 1997 water year was one of the wettest years on record and decreased the number of dates available for resetting reservoir water right accrual volumes. The 1906 priority was cut and restored for the final time between August 23rd and September 16th. For that reason, the *reset date* for reservoir water right accrual volumes was moved from August 15th to September 15th. The September 15th date continued to be the *reset date* used in the water right accounting for the next 19 years.

At the end of the 2017 Irrigation year IDWR Director, Gary Spackman, sent a letter to Watermaster, Lyle Swank, effectively delaying the resetting of the previously filled reservoir water right accrual volumes until January 1, 2018.

Effect of Lake Walcott Water Right on Natural Flow Distribution to Milner Irrigation District and American Falls Reservoir District #1 (AFRD2) Water Rights

Prior to 1978, natural flow was distributed to junior irrigation water rights ahead of the 1909-priority Lake Walcott storage water right. This included making 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 occurring sometime in October.

Reset Date Characteristics and Considerations

The implications of using different *reset dates* are important to understand before determining a new *reset date* or creating a new procedure that determines the appropriate *reset date* each year. *Reset date* issues include, but are not limited to, the following considerations and characteristics:

- If reservoir water right accrual volumes are not reset in September or October, junior reservoir water rights that were not filled on the *Day of Allocation* would accrue natural flow ahead of previously filled senior reservoir water rights. Natural flow distributed to unfilled junior reservoir storage rights in September/October/November/December prior to a *reset date* could reduce the distribution of natural flow to senior reservoir water rights in the subsequent year. The primary purpose of the *reset date* is to signal when the reservoir rights that are filled on the *Day of Allocation* are allowed to come back into priority ahead of other junior water rights, including previously unfilled junior reservoir water rights.

- A *reset date* occurring prior to when natural flow becomes available to reservoir water right priorities after the *Day of Allocation* prevents junior water rights from coming back into priority in the fall. It typically takes a few weeks between late-September and November after the *reset date* to completely fill the 1909 Lake Walcott water right volume before natural flow can become available to fill water rights junior to 1909 in October or November. It typically takes the entire winter, and sometimes the entire spring, to fill the 1921 American Falls water right volume before natural flow can become available to water rights with priorities junior to 1921.
- A later *reset date* that allows junior water rights to come into priority ahead of senior reservoir rights in the fall and winter could delay (or prevent) the fill of reservoir water rights and delay (or prevent) water rights junior to reservoirs from coming into priority in the subsequent spring and early-summer. Moving the *reset date* to a date later in the fall or winter could extend the time it takes to satisfy Palisades and other junior reservoir water right volumes (or prevent them from being completely satisfied) during the subsequent *irrigation season* in the spring and summer. Extending the time it takes to satisfy the junior reservoir water right volumes would also extend the time it takes before irrigation water rights junior to the reservoirs could come into priority (or prevent them from coming into priority) during the early and mid-irrigation season following the *reset date*.
- The annual period that natural flow accrues to storage water right volumes determines whether storage accrued in the fall can be used by reservoir spaceholders in the *current irrigation season* or must wait to be used in the following *irrigation season*. For at least the past 29 years, the annual period when natural flow could accrue to storage water rights and be allocated to reservoir spaceholders extended from the current year's *Day of Allocation* to the following year's *Day of Allocation*, or extended from the current year's *reset date* to the following year's *reset date*. The period-of-use listed on the storage water rights is January 1 to December 31. The Watermaster has interpreted the water right period-of-use to mean the storage water rights are in effect each day of the *calendar year* when natural flow is available to the reservoir priorities and their unfilled volumes. The Watermaster has not interpreted the period-of-use as defining the beginning and ending dates for the annual period of accounting for distributing natural flow to the reservoir water rights' priorities. If the *reset date* is moved from mid-September to January 1st it raises the question, should water stored September through December get added to storage that was allocated on the *Day of Allocation* of the current annual period, or should water stored September through December be allocated to reservoir spaceholders in the subsequent annual period?
- Using variable *reset dates* or the annual *Day of Allocation* for beginning and ending points of *storage seasons* does not provide a precise 12-month annual period for reservoirs to accrue natural flow to their annual water right volumes. If the *reset date* is September 15th one year, and changed to November 1st the next year, the opportunity for a reservoir water right to accrue natural flow between *reset dates* is 411 days. If the *reset date* is November 1st one year, and changed to September 15th the next year, the opportunity for reservoir water right accrual is 319 days. If the *Day of Allocation* is used as the beginning and ending period of the annual storage period, the time between *Days of Allocation* would be longer or shorter than a 12-month period because the *Day of Allocation* in consecutive years rarely falls on the same date each year. Only a constant annual *reset date* from year-to-year provides a precise 12-month period for reservoirs to accrue natural flow to their annual water right volumes.

- **Variable annual *reset dates* (instead of using constant annual *reset dates*) could maximize the beneficial use of water above Milner Dam each year.** Variable annual *reset dates* would largely be based on the ability to forecast future conditions. For example, if the reservoir system has an extraordinary amount of carryover storage near the end of the *irrigation season*, the *reset date* could be delayed to allow junior water rights to come into priority in the fall, reducing the amount of water spilled past Milner Dam without preventing the complete satisfaction of reservoir water rights and without affecting the distribution of natural flow to junior irrigation water rights in the beginning of the following *irrigation season*.
- **The annual period for accrual to *Refill 1* storage water rights is the same as the annual accrual period to the base reservoir water rights.** The recently adjudicated *Refill 1* reservoir water rights (subordinated to all other existing and future water rights) allow reservoirs to capture and store natural flow after the reservoir's base water right volumes have been satisfied prior to the *Day of Allocation*. The *Refill 1* water right annual volume is limited to the total combined annual accrual available to the reservoir's base water right(s) necessary to fill all spaceholder storage allocations. Once reservoir water rights have been completely satisfied during their annual period, they can't accrue additional natural flow to their water right volumes until the volumes are reset to begin a new annual accrual period. A January 1st *reset date* could prevent reservoirs from accruing natural flow to their *Refill 1* water rights in September, October, November, and December following the *Day of Allocation* until the reservoir water right accrual volumes were reset on January 1st. Any natural flow physically captured in the reservoir system September to December after reservoir water rights had been satisfied would be considered natural flow being stored without accruing to a water right and be classified as *unallocated storage*.

Summary

For the 29 years prior to 2017, the *reset date* for resetting annual reservoir water right accrual volumes occurred on days between the *Day of Allocation* and when the earliest reservoir priority (1906 Jackson Lake) was restored for the final time near the end of the *irrigation season*. The *reset date* for those 29 years defined the beginning and ending of the annual period natural flow could accrue to reservoir water right volumes, when in priority, until the annual reservoir volumes were satisfied or allocated on the following *Day of Allocation*.

A *reset date* occurring after the *Day of Allocation* and before reservoir water right priorities are restored near the end of the *irrigation season*:

- Maximizes the accrual to reservoir water rights each year;
- Minimizes the *unallocated storage* captured in the reservoir system in the fall;
- Prevents water rights, junior to the reservoirs, from coming into priority following the *reset date* until reservoir water right volumes have been satisfied;
- Allows water rights junior to the reservoirs to come into priority earlier in the spring or summer as a result of senior reservoir water rights being satisfied earlier in the *irrigation season*.

A *reset date* occurring after the *Day of Allocation* and after reservoir water right priorities are restored near the end of the *irrigation season*:

- Prevents or delays the filling of reservoir water rights;
- Could result in a large volumes of *unallocated storage* in the fall;
- Allows water rights in the fall, junior to the reservoirs, to come into priority;
- Could result in distributing natural flow to previously unfilled junior reservoir water rights in the fall while previously filled senior reservoir water rights fail to completely fill before the following *Day of Allocation*;
- Could prevent or delay when irrigation water rights junior to reservoirs come into priority in the following spring and summer while reservoir water rights are still accruing natural flow to their volumes.

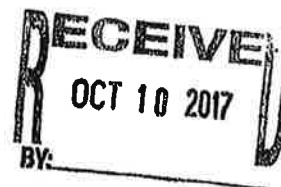
A *reset date* that remains constant each year:

- Defines a specific and precise 12-month annual period year-to-year for the distribution of natural flow to reservoir water right storage volumes;
- Eliminates flexibility to vary the *reset date* from year-to-year to maximize beneficial use of water above Milner Dam.

A *reset date* that varies each year based on current hydrologic conditions, circumstances, or forecasts:

- Results in an annual periods greater or less than 12 months to distribute natural flow to reservoir water right volumes;
- Could maximize distribution to water rights upstream from Milner Dam when storage spills past Milner Dam and the reservoir water rights are completely satisfied prior to the start of the following *irrigation season*.
- Could prematurely curtail junior water rights in the fall or keep junior reservoir and other water rights from being satisfied in the spring and summer if forecasts made near the end of the *irrigation season* are inaccurate.

Exhibit D



**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE PETITION
REGARDING STORAGE RESET IN
WATER DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

Docket No. P-WRA-2017-002

**NOTICE OF PREHEARING
CONFERENCE; ORDER SETTING
DEADLINE FOR PETITIONS TO
INTERVENE**

BACKGROUND

On August 18, 2017, Milner Irrigation District ("Milner") submitted a letter to the Idaho Department of Water Resources ("Department") asserting the "fall storage 'reset' for purposes of water right administration" in Water District 01 "is not authorized in the current storage water right partial decrees, including the Lake Walcott storage right (1-219)" and "has in effect curtailed Milner's natural flow water right 1-17 (November 14, 1916 priority date) in recent years." Milner requests "the Water District and Director ensure Milner receives the appropriate natural flow as required by Idaho law."

Milner's letter is a petition as defined by the Department's Rule of Procedure 230. *See* IDAPA 37.01.01.230. The Director will conduct formal proceedings to address the petition in accordance with the Department's Rule of Procedure 104 (IDAPA 37.01.01.104). The Director will schedule a prehearing conference and order that petitions to intervene be filed by the day prior to the prehearing conference pursuant to the Department's Rule of Procedure 352 (IDAPA 37.01.01.352).

NOTICE OF PREHEARING

The Director hereby notifies water users that a prehearing conference will be held in this matter on **November 13, 2017, at 1:30 p.m. (MDT)**, at the Department's State Office, located at 322 E. Front Street, 6th Floor, Director's Conference Room, Boise, Idaho 83702. The presiding officer will be the Director, Gary Spackman.

Milner and those seeking to intervene must be represented at the prehearing conference in person or by telephone. If participating by telephone, **please dial 1-720-279-0026 and enter the following guest code when prompted: 544840#.**

The prehearing conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the Department, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department or at <https://adminrules.idaho.gov/rules/current/37/0101.pdf>.

The prehearing conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please contact Kimi White at (208) 287-4815, no later than five (5) days prior to the conference.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that petitions to intervene in this matter must be filed with the Department by **November 12, 2017**, in accordance with the Department's Rules of Procedure 350-352. See IDAPA 37.01.01.350-352.

DATED this 5th day of October 2017.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October 2017, I served a true and correct copy of the foregoing document by electronic mail and U.S. mail, postage prepaid to the following:

Travis L. Thompson
Barker Rosholt & Simpson, LLP
P.O. Box 63
Twin Falls, Idaho 83303-0063
tlt@idahowaters.com

Lyle Swank
Water District 01 Watermaster
900 N. Skyline Dr., Ste A
Idaho Falls, ID 83402-1718
lyle.swank@idwr.idaho.gov

I FURTHER CERTIFY that, on this 5th day of October 2017, a true a correct copy of the foregoing was served by U.S. mail on water users at their last known addresses listed in the document titled "Additional Service List in the Matter of the Petition Regarding Storage Reset in Water District 01 filed by Milner Irrigation District" dated October 5, 2017, and posted to the Department's website at: <https://idwr.idaho.gov/legal-actions/administrative-actions/milner-petition.html>.


Kimi White

Exhibit E

Edmund C. Goodman, ISB # 10288
Hobbs, Straus, Dean & Walker, LLP
516 S.E. Morrison Street, Suite 1200
Portland, OR 97214
(503) 242-1745 (phone)
(503) 242-1072 (fax)
egoodman@hobbsstrauss.com

[Remaining Counsel see signatures]

ATTORNEY FOR THE SHOSHONE-BANNOCK TRIBES

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE PETITION	)	
REGARDING STORAGE RESET IN	)	Docket No. P-WRA-2017-002
WATER DISTRICT 01 FILED BY	)	
MILNER IRRIGATION DISTRICT	)	INTERIM STIPULATION AND MOTION
	)	FOR ORDER TO APPROVE
	)	

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 "SWC"), 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 City of Pocatello, the Shoshone-Bannock Tribes, and the United States Department of Interior, Bureau of Indian Affairs ("BIA") (together "Parties"), by and through their undersigned counsel of record, and pursuant to the Department's Rules of Procedure 557 and 612 (IDAPA 37.01.01), hereby

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

stipulate and jointly move the Department for an order approving the same and including the following procedures in Water District 01 water right reservoir administration and accounting for the 2018 calendar year.

1. This contested case was initiated in response to Milner Irrigation District's (Milner) August 18, 2017 letter to the Director of the Idaho Department Water Resources (IDWR) and the Water District 01 Watermaster.
2. Milner's letter inquired into the Basin 01 storage water rights "reset" accounting and how it would be implemented in the fall of 2017 vis-à-vis Milner's 1916 natural flow irrigation water right 01-17.
3. The Director responded by initiating this contested case. *See Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (October 5, 2017) ("Notice Order"). The Director published the *Notice Order* in newspapers throughout Water District 01 and provided any interested person or water user the opportunity to appear and intervene.
4. The above-named parties all filed motions and were granted intervention. On November 20, 2017 the Director issued an order requesting a staff memorandum and setting deadlines for the parties to file and respond to statements of issues. Water District 01 (WD01) staff filed its *Staff Memorandum* on December 1, 2017. Various parties then submitted statements of issues and responses. On January 3, 2018 the Director issued his *Order re: Statements of Issues and Responses; Order Adopting Deadlines; Amended Notice of Status Conference* ("Legal Question Order"). The Director requested the parties to brief the following legal question:

[W]hether the plain language of the "period of use" element of the storage water right partial decrees for federal onstream reservoirs in Water District 01 that specifies "1/1 to 12/31" as the time period for "irrigation storage" requires that the reset date for those rights be January 1.

Legal Question Order at 4.

5. Various parties then filed opening and response briefs addressing the above-referenced question. On February 7, 2018 the parties filed a *Stipulated Motion for Stay* requesting the Director to stay a pending decision on the legal question and allow the parties 30 days to continue settlement negotiations. The Director granted the motion. A second stipulated motion was filed on March 2, 2018, requesting the Director to continue the stay and vacate the previously scheduled hearing. The Director granted this motion and conducted a status conference on March 20, 2018. At the status conference the parties reported a settlement in principle and scheduled a follow up status conference for April 26, 2018.

6. At the April 26, 2018 status conference, the parties reported on their negotiation progress and asked for an extension of the stay to facilitate further discussions, and execution of an interim stipulation for the 2018 calendar year. The Director agreed and extended the stay and also set a deadline of June 4, 2018 to submit any interim stipulation to cover operations during the 2018 calendar year.
7. This Interim Stipulation followed.
8. The parties understand the term "reservoir reset" describes the date in the fall upon which the WD01 Watermaster resets the storage volumes for the Upper Snake River Basin storage rights² so that they may begin accruing natural flow when in priority up to the annual storage volume element of the water right.
9. The parties request that the Director make this Interim Stipulation an order of the Department for the 2018 calendar year.
10. In executing this Interim Stipulation, no party waives any legal or factual arguments regarding the issues that may eventually be litigated in this contested case, nor may this Interim Stipulation be offered as evidence or proof of any parties' consent to the Interim Stipulation as the permanent resolution of the dispute.

INTERIM STIPULATION

For the 2018 calendar year only, the parties agree that "reservoir reset" shall be operated in the following manner:

The WD01 Watermaster shall reset storage accounts and begin accounting for and distributing, in priority, natural flow to reservoir storage rights as of September 15th, 2018 for the next annual storage volume period.

Provided, however, WD01 shall limit the rate of diversion to storage of the Lake Walcott storage water right 1-219 to 2,500 cfs from September 15 through and including October 15.

² Water right nos. 1-219, 1-2064, 1-2068, 1-4055, 1-10042, 1-10043, 1-10044, 1-10045, 1-10620, 1-10621A, 1-10621B, 1-10622, 1-10623, 21-2156, 21-4155, 21-10560, 21-13161, 21-13194, 21-2154, 21-2161, 21-12946, 21-13193, 25-7004, 25-14413A, and 25-14413B.

DATED this 22nd day of May, 2018.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Travis L. Thompson

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

FLETCHER LAW OFFICE



for

W. Kent Fletcher

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

DATED this 23rd day of May, 2018.

BARKER ROSHOLT & SIMPSON LLP

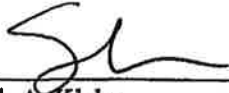
A handwritten signature in black ink, appearing to read 'J. K. Simpson', is written over a horizontal line.

John K. Simpson

Attorneys for Idaho Power Company

DATED this 22nd day of May, 2018.

WHITE & JANKOWSKI LLP

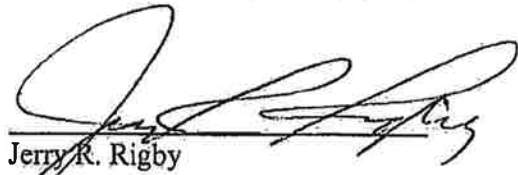


Sarah A. Klahn

Attorneys for City of Pocatello

DATED this 23rd day of May, 2018.

RIGBY ANDRUS & RIGBY, CHTD.



Jerry R. Rigby

*Attorneys for Fremont Madison Irrigation District,
Idaho Irrigation District, North Fork Reservoir Co., and
New Sweden Irrigation District*

DATED this 22nd day of May, 2018.

William Bacon by SDO
William Bacon

Attorneys for Shoshone-Bannock Tribes

DATED this 22nd day of May, 2018.

HOBBS STRAUS DEAN & WALKER LLP

Edmund C. Goodman by SDO
Edmund C. Goodman

Attorneys for Shoshone-Bannock Tribes

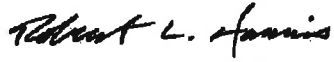
DATED this 23^d day of May, 2018.

Duane Mecham
Duane Mecham

Attorneys for U.S. Dept. of Interior, Bureau of Indian Affairs

DATED this 23rd day of May, 2018.

HOLDEN KIDWELL HAHN & CRAPO PLLC



Robert L. Harris

*Attorneys for Palisades Water Users, Inc. and
the City of Idaho Falls*

DATED this 22nd day of May, 2018.

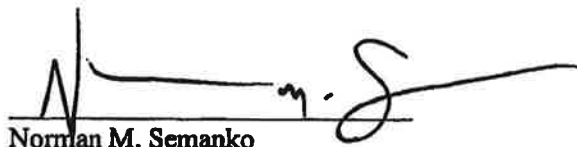
MCHUGH & BROMLEY PLLC


Candice M. McHugh

Attorneys for Coalition of Cities

DATED this 23 day of May, 2018.

PARSONS BEHLE & LATIMER

A handwritten signature in black ink, appearing to read "Norman M. Semanko", written over a horizontal line.

Norman M. Semanko

Attorneys for Aberdeen-Springfield Canal Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of May, 2018, I caused to be served a true and correct copy of the foregoing **INTERIM STIPULATION AND MOTION FOR ORDER TO APPROVE** by email and U.S. mail to IDWR, and by electronic mail to the parties:

Director Gary Spackman c/o Kimi White IDWR 322 E Front St Boise, ID 83720-0098 *** service by U.S. Mail and electronic mail gary.spackman@idwr.idaho.gov kimi.white@idwr.idaho.gov garrick.baxter@idwr.idaho.gov	Sarah A. Klahn White & Jankowski, LLP 511 Sixteenth Street, Suite 500 Denver, Colorado 80202 sarahk@white-jankowski.com	William Bacon Shoshone-Bannock Tribes P.O. Box 306 Fort Hall, Idaho 83203 bbacon@sbtribes.com
Edmund Clay Goodman Hobbs, Straus, Dean & Walker LLP 806 SW Broadway, Suite 900 Portland, Oregon 97205 egoodman@hobbsstraus.com	Chris M. Bromley Candice McHugh McHugh Bromley, PLLC 380 S. 4 th Street, Suite 103 Boise, Idaho 83702 cbromley@mchughbromley.com cmchugh@mchughbromley.com	Jerry R. Rigby Rigby, Andrus & Rigby Law, PLLC 25 North Second East Rexburg, Idaho 83440 jrigby@rex-law.com
John K. Simpson Barker Rosholt & Simpson, LLP P.O. Box 2139 Boise, Idaho 83701-2139 jks@idahowaters.com	W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318 wkf@pmt.org	Norman M. Semanko Parsons Behle & Latimer 800 West Main Street, Ste 1300 Boise, Idaho 83702 nsemanko@parsonsbehle.com
Robert L. Harris D. Andrew Rawlings Holden, Kidwell, Hahn & Crapo, PLLC P.O. Box 50130 Idaho Falls, Idaho 83405 rharris@holdenlegal.com arawlings@holdenlegal.com	Duane Mecham U.S. Dept. of the Interior Bureau of Indian Affairs 805 SW Broadway, Suite 600 Portland, Oregon 97205 duane.mecham@sol.doi.gov	Lyle Swank Water District 01 900 N. Skyline Drive, Suite A Idaho Falls, Idaho 83402-1718 lyle.swank@idwr.idaho.gov

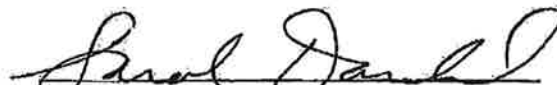

Sarah R. Dandurand

Exhibit F

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE PETITION
REGARDING STORAGE RESET IN
WATER DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

Docket No. P-WRA-2017-002

**INTERLOCUTORY ORDER
ACCEPTING 2018 SETTLEMENT**

BACKGROUND

On April 30, 2018, the Director ("Director") of the Idaho Department of Water Resources ("Department") issued an order staying this matter until June 4, 2018. The Director also ordered the parties to submit a joint draft agreement for a one-year reset of the storage water rights for the fall of 2018 by June 4, 2018.

On May 23, 2018, the parties submitted to the Director an *Interim Stipulation and Motion for Order to Approve* ("2018 Settlement"). The parties ask the Director to issue an order accepting the 2018 Settlement for the 2018 calendar year and instruct the Water District 01 watermaster to:

- 1) reset storage accounts and begin accounting for and distributing, in priority, natural flow to reservoir storage rights as of September 15, 2018, for the next annual storage volume period, and
- 2) limit the rate of diversion to storage of the Lake Walcott storage water right 1-219 to 2,500 cfs from September 15 through and including October 15.

2018 Settlement at 3.

The Department's Rules of Procedure authorize the Director to consider and accept settlement proposals. See IDAPA 37.01.01.612-614. The Director has considered and will accept the 2018 Settlement for the calendar year.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the 2018 Settlement is ACCEPTED for the 2018 calendar year. The Water District 01 watermaster is instructed to:

- 1) reset storage accounts and begin accounting for and distributing, in priority, natural flow to reservoir storage water rights¹ as of September 15, 2018, for the next annual storage volume period, and
- 2) limit the rate of diversion to storage of the Lake Walcott storage water right 1-219 to 2,500 cfs from September 15 through and including October 15.

DATED this 15th day of June 2018.


GARY SPACKMAN
Director

¹ The reservoir storage water rights are: 1-219, 1-2064, 1-2068, 1-4055, 1-10042, 1-10043, 1-10044, 1-10045, 1-10401, 1-10620, 1-10621A, 1-10621B, 1-10622, 1-10623, 21-2156, 21-4155, 21-10560, 21-13161, 21-13194, 21-2154, 21-2161, 21-12946, 21-13193, 25-7004, 25-14413A, and 25-14413B.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of June 2018, I served a true and correct copy of the foregoing document by the method(s) indicated to the following:

Travis L. Thompson
Barker Rosholt & Simpson, LLP
P.O. Box 63
Twin Falls, Idaho 83303-0063
tlt@idahowaters.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Sarah A. Klahn
White & Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, Colorado 80202
sarahk@white-jankowski.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

William Bacon
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203
bbacon@sbtribes.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Edmund Clay Goodman
Hobbs, Straus, Dean & Walker LLP
516 SE Morrison Street, Ste. 1200
Portland, Oregon 97214
egoodman@hobbstrauss.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

John K. Simpson
Travis L. Thompson
Jonas A. Reagan
Barker Rosholt & Simpson, LLP
P.O. Box 63
Twin Falls, Idaho 83303-0063
jks@idahowaters.com
tlt@idahowaters.com
jreagan@idahowaters.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Chris M. Bromley
Candice McHugh
McHugh Bromley, PLLC
380 S. 4th Street, Suite 103
Boise, Idaho 83702
cbrombley@mchughbromley.com
cmchugh@mchughbromley.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Jerry R. Rigby
Rigby, Andrus & Rigby Law, PLLC
25 North Second East
Rexburg, Idaho 83440
jrigby@rex-law.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

John K. Simpson
Barker Rosholt & Simpson, LLP
P.O. Box 2139
Boise, Idaho 83701-2139
jks@idahowaters.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

W. Kent Fletcher
Fletcher Law Office
P.O. Box 248
Burley, Idaho 83318
wkf@pmt.org

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Norman M. Semanko
Parsons Behle & Latimer
800 West Main Street, Suite 1300
Boise, Idaho 83702
nsemanko@parsonsbehle.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Robert L. Harris
D. Andrew Rawlings
Holden, Kidwell, Hahn & Crapo, PLLC
P.O. Box 50130
Idaho Falls, Idaho 83405
rharris@holdenlegal.com
arawlings@holdenlegal.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Duane Mecham
U.S. Department of the Interior
Bureau of Indian Affairs
805 SW Broadway, Suite 600
Portland, Oregon 97205
duane.mecham@sol.doi.gov

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Lyle Swank
Water District 01
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718
lyle.swank@idwr.idaho.gov

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Courtesy copies sent to:

Lorri Gray, Regional Director
Bureau of Reclamation
Pacific Northwest Regional Office
1150 North Curtis Road, Ste. 100
Boise, Idaho 83706
lgray@usbr.gov

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Roland Springer, Area Manager
Snake River Area Office
230 Collins Road
Boise, Idaho 83702
rspringer@usbr.gov

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Matt J. Howard, PN-3130
Bureau of Reclamation
1150 North Curtis Road, Ste. 100
Boise, Idaho 83706-1234
mhoward@usbr.gov

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email


Kimi White

Exhibit G

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
BARKER ROSHOLT & SIMPSON LLP
163 Second Avenue West
P.O. Box 63
Twin Falls, Idaho 83303-0063
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*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

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

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE PETITION
REGARDING STORAGE RESET IN
WATER DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

Docket No. P-WRA-2017-002

**STIPULATION AND JOINT MOTION
FOR ORDER APPROVING
STIPULATION / JOINT MOTION FOR
STAY**

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 "SWC"), 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 City of Pocatello, the Shoshone-Bannock Tribes, and the United States Department of Interior, Bureau of Indian Affairs ("BIA"), by and through their undersigned counsel of record, and pursuant to the Department's Rules of Procedure 557 and 612 (IDAPA 37.01.01), hereby stipulate and jointly move the Department for an order approving the same, for an interim order including the following procedures in Water District 01 water right administration and accounting beginning in the 2019 irrigation season, and for an order staying the pending contested case to permit the parties to seek a remark adding this language to the final decree in the Snake River Basin Adjudication pursuant to a motion under IRCP 60(b).

PROCEDURAL BACKGROUND

Milner Irrigation District sent a letter to the Director of the Idaho Department Water Resources (IDWR) and the Water District 01 Watermaster on August 18, 2017. Milner inquired into the Basin 01 storage water rights "reset" accounting and how it would be implemented in the fall of 2017 vis-à-vis Milner's 1916 natural flow irrigation water right 01-17. The Director responded by initiating this contested case. *See Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (October 5, 2017) ("*Notice Order*"). The Director published the *Notice Order* in newspapers throughout Water District 01 and provided any interested person or water user the opportunity to appear and intervene.

The above-named parties all filed motions and were granted intervention. On November 20, 2017 the Director issued an order requesting a staff memorandum and setting deadlines for the parties to file and respond to statements of issues. Water District 01 staff filed its *Staff*

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

Memorandum on December 1, 2017. Various parties then submitted statements of issues and responses. On January 3, 2018 the Director issued his *Order re: Statements of Issues and Responses; Order Adopting Deadlines; Amended Notice of Status Conference* (“*Legal Question Order*”). The Director requested the parties to brief the following legal question:

[W]hether the plain language of the “period of use” element of the storage water right partial decrees for federal onstream reservoirs in Water District 01 that specifies “1/1 to 12/31” as the time period for “irrigation storage” requires that the reset date for those rights be January 1.

Legal Question Order at 4.

Various parties then filed opening and response briefs addressing the above-referenced question. On February 7, 2018 the parties filed a *Stipulated Motion for Stay* requesting the Director to stay a pending decision on the legal question and allow the parties 30 days to continue settlement negotiations. The Director granted the motion. A second stipulated motion was filed on March 2, 2018, requesting the Director to continue the stay and vacate the previously scheduled hearing. The Director granted this motion and conducted a status conference on March 20, 2018. At the status conference the parties reported a settlement in principle and scheduled a follow up status conference for April 26, 2018. At that point, the parties reported that they had an agreement on the general outline of a settlement and entered into a stipulated agreement for an interim order to govern the accounting and administration of storage reset for the 2018 irrigation season, which was approved by the Director on June 1, 2018. *See Interlocutory Order Accepting 2018 Settlement*. The parties informed the Director, however, that they were still working on negotiating an agreement for a means of providing a “permanent” resolution to this matter in a manner that would satisfy all parties.

The parties report through this stipulation and motion that they have reached such agreement. For several reasons related to the nature of the settlement, the interests of the parties,

and the nature of the rights being settled, effectuating the settlement will involve the parties submitting the operative language of the settlement to the Snake River Basin Adjudication (SRBA) district court through an IRCP 60(b) motion to re-open the decree for the limited purpose of entering the operative language as remarks in the Final Decree.

FACTUAL BACKGROUND

The parties and Water District 01 have identified various facts concerning administration of storage water rights in the Upper Snake River Basin above Milner Dam. In general, the administration has changed over time, including after implementation of the computerized accounting program beginning in 1978. Beginning in 1988, the storage water rights accounts were “reset” in the fall each year, whereby the rights were administered with all other water rights by priority until the following season’s “date of allocation.” The annual date of reset changed over time as well (i.e. October 1st, August 1st, September 15th); the Final Decree is silent on the reset date for the storage water rights. Further, the Lake Walcott storage water right (1-219) previously contained a decreed and licensed diversion rate limitation of 2,500 cfs for the rate of storage in the reservoir. IDWR removed the diversion rate limitation from the water right’s recommendation. Ultimately the court decreed the water right without the diversion rate limitation as well, leaving only an annual storage volume quantity.

The parties dispute the legal significance of the storage water rights prior administration. The parties have also raised various issues in responding to the Director’s threshold legal question. In the interests of settlement, this stipulation attempts to reach an equitable solution regarding the issue of “storage reset” through stipulated remarks to be included on the storage right decrees, including a diversion rate limitation for Lake Walcott (1-219).

STIPULATION

The parties hereby stipulate to the following:

1. Operative Language for Storage Reset: The parties agree to the following operative language (the "Operative Language"), which would direct the implementation of the following procedures and limitations for the reset and accounting of storage water right volumes in Water District 01:

Other Provisions Necessary for Definition or Administration of this Water Right [to be added to 1-219 et al.]:

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.

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.

2. Issuance of Interim Order and Stay of Proceedings by IDWR: The parties intend to present the Operative Language to the SRBA Court along with a motion pursuant to IRCP 60(b), for inclusion of the Operative Language, or such terms as required by the Court, as remarks in the SRBA Final Decree. The parties hereby move the Director for an order staying this contested case pending a decision by the SRBA Court on said motion, and further, in the interim, to instruct the Water District 01 Watermaster to apply the Operative Language to the accounting and administration of the storage water right volumes in Water District 01 until the SRBA Court rules on the 60(b) motion.

3. Additional Stipulation. The parties agree not to contest, oppose, object to or otherwise challenge the Shoshone-Bannock Tribes' assertion that pursuant to Section 8.3 of the Fort Hall Agreement and consistent with historical water right administration in Basin 27, the Blackfoot Reservoir and Gray's Lake have been and should continue to be administered separately from water rights in Water District 01.

4. Approval of Stipulation and Issuance of Interim Order by IDWR. The parties agree to support the Joint Motion for the orders set forth below. If for any reason IDWR does not approve the Stipulation and issue the orders pursuant to the terms of this Stipulation, this Stipulation is null and void and shall have no effect, and the parties shall have the option to file a motion to lift the stay in this contested case.

5. Stipulation Not to Be Used Against the Parties. The parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing in this Stipulation, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to show the validity or invalidity of any water right claims made by the parties, or as an admission or concession of wrongdoing or liability, or shall be used in any manner by any party in any future administrative or judicial proceedings, other than those seeking approval of this Stipulation by IDWR, for interpretation or enforcement of this Stipulation, or for a purpose contemplated by Idaho Rule of Evidence 408.

6. Reservations. The parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending

administrative litigation, by compromise and settlement and that nothing herein shall be construed as precedent in any other proceeding or context.

7. Voluntary Execution. This Stipulation was entered into and executed voluntarily by the parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence.

8. Binding Effect. This Stipulation shall be binding on any and all successors, assigns, heirs, executors, and administrators of each of the parties.

9. Effective Date. This Stipulation shall become effective upon execution by all of the parties.

JOINT MOTION FOR ORDER APPROVING STIPULATION

The parties hereby jointly move IDWR to approve the foregoing Stipulation and issue an order incorporating the same into Water District 01 water right administration and accounting procedures. The parties further request that this procedure be implemented starting in the 2019 irrigation season. The parties intend to present the joint motion, including any evidence required by IDWR to approve the same, at a hearing scheduled at the Director's convenience.

DATED this 10th day of April, 2019.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Travis L. Thompson

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

FLETCHER LAW OFFICE



W. Kent Fletcher

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

DATED this 12th day of April, 2019.

BARKER ROSHOLT & SIMPSON LLP

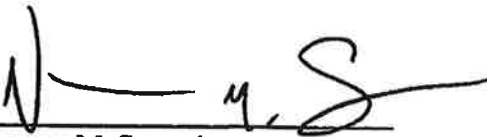


John K. Simpson

Attorneys for Idaho Power Company

DATED this 12 day of April, 2019.

PARSONS BEHLE & LATIMER

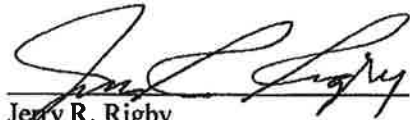


Norman M. Semanko

Attorneys for Aberdeen-Springfield Canal Company

DATED this 4th day of APRIL, 2019.

RIGBY ANDRUS & RIGBY, CHTD.



Jerry R. Rigby

*Attorneys for Fremont Madison Irrigation District,
Idaho Irrigation District, North Fork Reservoir Company,
and New Sweden Irrigation District*

DATED this 10th day of April, 2019.

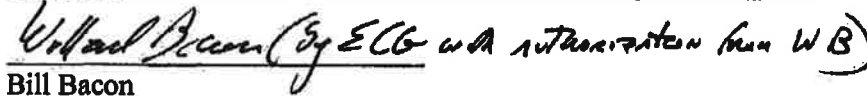
HOBBS STRAUS DEAN & WALKER LLP



Ed Goodman

Attorneys for Shoshone-Bannock Tribes

TRIBAL ATTORNEY FOR SHOSHONE-BANNOCK TRIBES



Bill Bacon

Attorneys for Shoshone-Bannock Tribes

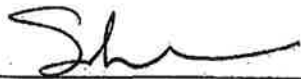
DATED this 15th day of April, 2019.

Duane Mecham
Duane Mecham

Attorneys for U.S. Dept. of Interior, Bureau of Indian Affairs

DATED this 10th day of April, 2019.

SOMACH SIMMONS & DUNN

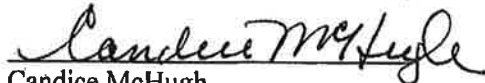


Sarah A. Klahn

Attorneys for the City of Pocatello

DATED this 3rd day of April, 2019.

MCHUGH BROMLEY PLLC


Candice McHugh

*Attorneys for the Cities of Bliss, Burley,
Carey, Declo, Dietrich, Gooding, Hazelton,
Heyburn, Jerome, Paul, Richfield, Rupert,
Shoshone and Wendell*

DATED this 12th day of April, 2019.

HOLDEN KIDWELL HAHN & CRAPO PLLC


Robert L. Harris

*Attorneys for Palisades Water Users, Inc. and
the City of Idaho Falls*

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2019, I served a true and correct copy of the foregoing *Stipulation and Joint Motion for Order Approving Stipulation / Motion for Stay* on the following by the method indicated:

Director Gary Spackman c/o Kimberle English IDWR 322 E Front St Boise, ID 83720-0098 *** service by U.S. Mail and electronic mail gary.spackman@idwr.idaho.gov kimberle.english@idwr.idaho.gov garrick.baxter@idwr.idaho.gov	Sarah A. Klahn Somach Simmons & Dunn 2701 Lawrence St. #113 Denver, Colorado 80205 sklahn@somachlaw.com	William Bacon Shoshone-Bannock Tribes P.O. Box 306 Fort Hall, Idaho 83203 bbacon@sbtribes.com
Edmund Clay Goodman Hobbs, Straus, Dean & Walker LLP 516 SE Morrison Ave., Ste 1200 Portland, Oregon 97214 egoodman@hobbsstraus.com	Chris M. Bromley Candice McHugh McHugh Bromley, PLLC 380 S. 4th Street, Suite 103 Boise, Idaho 83702 cbromley@mchughbromley.com cmchugh@mchughbromley.com	Jerry R. Rigby Rigby, Andrus & Rigby Law, PLLC 25 North Second East Rexburg, Idaho 83440 jrigby@rex-law.com
John K. Simpson Barker Rosholt & Simpson, LLP P.O. Box 2139 Boise, Idaho 83701-2139 jks@idahowaters.com	W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318 wkf@pmt.org	Norman M. Semanko Parsons Behle & Latimer 800 West Main Street, Ste 1300 Boise, Idaho 83702 nsemanko@parsonsbehle.com
Robert L. Harris D. Andrew Rawlings Holden, Kidwell, Hahn & Crapo, PLLC P.O. Box 50130 Idaho Falls, Idaho 83405 rharris@holdenlegal.com arawlings@holdenlegal.com	Duane Mecham U.S. Dept. of the Interior Bureau of Indian Affairs 805 SW Broadway, Suite 600 Portland, Oregon 97205 duane.mecham@sol.doi.gov	Lyle Swank Water District 01 900 N. Skyline Drive, Suite A Idaho Falls, Idaho 83402-1718 lyle.swank@idwr.idaho.gov

/s/
Travis L. Thompson

Exhibit H

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
BARKER ROSHOLT & SIMPSON LLP
163 Second Avenue West
P.O. Box 63
Twin Falls, Idaho 83303-0063
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*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

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

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE PETITION
REGARDING STORAGE RESET IN
WATER DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

Docket No. P-WRA-2017-002

**INTERIM 2019 STIPULATION AND
JOINT MOTION FOR ORDER
APPROVING STIPULATION / JOINT
MOTION FOR STAY**

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 "SWC"),
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 City of Pocatello, the Shoshone-Bannock Tribes, and the United States Department of Interior, Bureau of Indian Affairs (“BIA”), by and through their undersigned counsel of record, and pursuant to the Department’s Rules of Procedure 557 and 612 (IDAPA 37.01.01), hereby stipulate and jointly move the Department for an order approving the same, for an interim order including the following procedures in Water District 01 water right administration and accounting for the 2019 irrigation season, and for an order staying the pending contested case to permit the parties to seek a remark adding this language to the final decree in the Snake River Basin Adjudication pursuant to a motion under IRCP 60(b).

BACKGROUND

The procedural and factual background is set forth in the *Stipulation and Joint Motion for Order Approving Stipulation (“April Stipulation”)* filed with IDWR on April 10, 2019. The Director did not approve the *April Stipulation* but held follow up status conferences with the parties to discuss the stipulation on May 15 and July 10, 2019. During this time counsel for the U.S. Bureau of Reclamation also sent the Director a letter outlining Reclamation’s position concerning the stipulation. *See Jeremiah Williamson July 8, 2019 Letter to Director Gary Spackman.*

As set forth in the *April Stipulation* and communicated to the Director at the status conferences, the parties intend to seek relief in the SRBA Court this fall. In order to provide an interim resolution pending those proceedings for purposes of the upcoming reservoir storage season, the parties agree to the following for purposes of the 2019 fall reset only.

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

STIPULATION

The parties hereby stipulate to the following:

1. 2019 Storage Reset: The parties agree to the implementation of the following procedures for the reset and accounting of storage water right volumes in Water District 01:

October 1st shall begin the annual period for water right accounting in the Upper Snake River Basin upstream of Milner Dam. October 1st is the 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.

2. Issuance of Interim Order and Stay of Proceedings by IDWR: The parties intend to present the Operative Language of the *April Stipulation* to the SRBA Court along with a motion pursuant to IRCP 60(b), for inclusion of the Operative Language, or such terms as required by the Court, as remarks in the SRBA Final Decree. The parties hereby move the Director for an order staying this contested case pending a decision by the SRBA Court on said motion, and further, in the interim, to instruct the Water District 01 Watermaster to apply October 1st and the storage reset date for 2019 to the accounting and administration of the storage water right volumes in Water District 01.

3. Approval of Stipulation and Issuance of Interim Order by IDWR. The parties agree to support the Joint Motion for the orders set forth below. If for any reason IDWR does not approve the Stipulation and issue the orders pursuant to the terms of this Stipulation, this Stipulation is null and void and shall have no effect, and the Parties shall have the option to file a motion to lift the stay in this contested case.

4. Limitation on Applicability of Stipulation in Future Matters. This Stipulation is entered into by way of compromise and settlement. Any agreements and conditions herein are due solely to the unique circumstances of this case and the resulting Stipulation. This Stipulation does not

establish any precedent and will not be construed as a commitment to include any specific findings of fact, conclusions of law, or specific engineering methodologies or administrative practices in future stipulations or decrees outside the scope of the dispute in this matter.

5. Reservations. The parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending administrative litigation, by compromise and settlement and that nothing herein shall be construed as precedent in any other proceeding or context.

6. Voluntary Execution. This Stipulation was entered into and executed voluntarily by the parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence.

7. Binding Effect. This Stipulation shall be binding on any and all successors, assigns, heirs, executors, and administrators of each of the parties.

8. Effective Date. This Stipulation shall become effective upon execution by all of the parties.

JOINT MOTION FOR ORDER APPROVING INTERIM 2019 STIPULATION

The parties hereby jointly move IDWR to approve the foregoing Interim 2019 Stipulation and issue an order incorporating the same into Water District 01 water right administration and accounting procedures for 2019. The parties further jointly move IDWR to stay this contested case pending resolution of the motion(s) to be filed with the SRBA Court this fall.

Exhibit I

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**



IN THE MATTER OF THE PETITION
REGARDING STORAGE RESET IN
WATER DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

Docket No. P-WRA-2017-002

**INTERLOCUTORY ORDER
ACCEPTING 2019 SETTLEMENT
AND EXTENDING STAY ORDER**

BACKGROUND

On August 23, 2019, the parties submitted to the Director an *Interim 2019 Stipulation and Joint Motion for Order Approving Stipulation / Joint Motion for Stay* ("2019 Interim Stipulation"). The 2019 Interim Stipulation requests the Director stay this matter in order to allow the parties to seek relevant relief from the Snake River Basin Adjudication Court in the fall of 2019. In order to allow interim resolution of the reset issue, the parties ask the Director to issue an order accepting the 2019 Interim Stipulation for the 2019 calendar year and instruct the Water District 01 watermaster to:

- 1) Reset storage accounts and begin accounting for and distributing, in priority, natural flow to reservoir storage rights as of October 1, 2019, for the next annual storage volume period.

2019 Interim Stipulation at 3.

The parties further discussed and explained the 2019 Interim Stipulation to the Department at the August 28, 2019, status conference in this matter and verbally requested the Director approve it.

The Department's Rules of Procedure authorize the Director to consider and accept settlement proposals. *See* IDAPA 37.01.01.612-614. The Director has considered and will accept the 2019 Interim Stipulation for the fall of 2019 and stay this proceeding.

ORDER

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.

**INTERLOCUTORY ORDER ACCEPTING 2019 SETTLEMENT AND EXTENDING
STAY ORDER – Page 1**

IT IS FURTHER ORDERED that the 2019 Interim Stipulation is ACCEPTED for the 2019 calendar year. The Water District 01 watermaster is instructed to:

- 1) Reset storage accounts and begin accounting for and distributing, in priority, natural flow to reservoir storage water rights¹ as of October 1, 2019, for the next annual storage volume period.

DATED this 11th day of September 2019.


GARY SPACKMAN
Director

¹ The reservoir storage water rights are: 1-219, 1-2064, 1-2068, 1-4055, 1-10042, 1-10043, 1-10044, 1-10045, 1-10401, 1-10620, 1-10621A, 1-10621B, 1-10622, 1-10623, 21-2156, 21-4155, 21-10560, 21-13161, 21-13194, 21-2154, 21-2161, 21-12946, 21-13193, 25-7004, 25-14413A, and 25-14413B.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of September 2019, I served a true and correct copy of the foregoing document by U.S. mail, postage prepaid to the following:

Sarah A. Klahn
Somach Simmons & Dunn
2701 Lawrence St. #113
Denver, Colorado 80205
sklahn@somachlaw.com
dthompson@somachlaw.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email

William Bacon
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203
bbacon@sbtribes.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email

Edmund Clay Goodman
Hobbs, Straus, Dean & Walker LLP
516 SE Morrison Avenue, Suite 1200
Portland, Oregon 97214
egoodman@hobbsstraus.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email

Travis L. Thompson
Barker Rosholt & Simpson, LLP
P.O. Box 63
Twin Falls, Idaho 83303-0063
tlt@idahowaters.com
jf@idahowaters.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email

Chris M. Bromley
Candice McHugh
McHugh Bromley, PLLC
380 S. 4th Street, Suite 103
Boise, Idaho 83702
cbromley@mchughbromley.com
cmchugh@mchughbromley.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email

Jerry R. Rigby
Rigby, Andrus & Rigby Law, PLLC
25 North Second East
Rexburg, Idaho 83440
jrigby@rex-law.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email

John K. Simpson
Barker Rosholt & Simpson, LLP
P.O. Box 2139
Boise, Idaho 83701-2139
jks@idahowaters.com
jlw@idahowaters.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email

W. Kent Fletcher
Fletcher Law Office
P.O. Box 248
Burley, Idaho 83318
wkf@pmt.org

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email

Norman M. Semanko
Parsons Behle & Latimer
800 West Main Street, Suite 1300
Boise, Idaho 83702
nsemanko@parsonsbehle.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email

Robert L. Harris
D. Andrew Rawlings
Holden, Kidwell, Hahn & Crapo, PLLC
P.O. Box 50130
Idaho Falls, Idaho 83405
rharris@holdenlegal.com
arawlings@holdenlegal.com

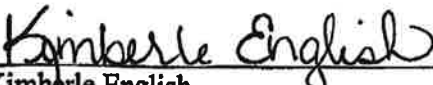
- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email

Duane Mecham
U.S. Dept of the Interior
Regional Office of the Solicitor
601 SW 2nd Ave, Ste 1950
Portland, OR 97204-3172
duane.mecham@sol.doi.gov

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email

Tony Olenichak
Water District 01
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718
tony.olenichak@idwr.idaho.gov

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☒ Email



Kimberle English

Exhibit J

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS.

TWIN FALLS CANAL COMPANY, Plaintiff

vs.

D E C R E E

CHARLES W. FOSTER, et al,

Defendants.

This cause having come on to be heard this 13th day of June, 1913, upon the amended complaint of the plaintiff, the Twin Falls Canal Company; the answer and cross-complaint of the Twin Falls North Side Land and Water Company, a Delaware corporation, and the North Side Canal Company, an Idaho corporation; the answer and cross-complaint, Asabel B. Abbott, Josie F. Acuff, and others claiming rights in the Snake River by reason of the Minidoka Reclamation Project of the United States (as filed by C.H. Lingenfelter and S.L. Tipton and B.E. Stoutemyer, Attorneys), including the Secretary of the Interior of the United States and F.L. Fogg, Engineer employed by the United States, in charge of the Minidoka dam on the Snake River; the answer and cross-complaint of John Rohling, A. Kennedy, and others (as filed by J.C. Rogers, Attorney), also claiming rights by reason of said Minidoka Reclamation Project; the answer and cross-complaint of J.H. Ing, Clarence E. Williams, and others (filed by C.O. Longley, Attorney); the answer and cross-complaint in intervention of Charles W. Arthur; and the answer of Oscar P. Anderson; Cavanah, Blake and Eschbach and A.M. Bowen appearing as counsel for the plaintiffs, S.H. Hays appearing as counsel for the defendants, the Twin Falls North Side Land and Water Company and the North Side Canal Company C.H. Lingenfelter and B.E. Stoutemyer appearing as counsel for the Secretary of Interior and for F.L. Fogg and other defendants represented by them, J.C. Rogers appearing for the defendants represented by him; C.O. Longley appearing as counsel for the defendants represented by him, John E. Williams appearing for the defendant, C.W. Arthur; and all other defendants herein having been regularly served with summons and not answering or appearing their default was heretofore regularly entered. Witnesses were sworn and examined and cross-examined and certain documentary evidence introduced in support of the pleadings herein, from which it appears that the plaintiffs and defendants are entitled to the relief and judgments herein awarded, and certain parties having made and filed their written stipulation consenting and agreeing to the Decree and Judgment as herein made and awarded; Findings of Fact and Conclusions of Law and other written decisions of this Court having been waived by the parties; and the Court being fully advised, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1.

That each and every one of the tracts of land described

RIGHT NO. 7.

That the defendants, THE TWIN FALLS NORTH SIDE LAND AND WATER COMPANY and the NORTH SIDE CANAL COMPANY, are hereby awarded the use of the waters of the natural flow of the Snake River, to be diverted at the Milner Dam on the North Side of Snake River, for the use of the lands lying under the canal system of the said company in the following amount from June 2, 1909 500 second feet, or so much thereof as together with the prior rights herein above awarded to the North Side Canal Company will make a total of 3,000 second feet, the capacity of the canal system of said company, hereby designated as Right No. 7, same being evidenced by the Permit of the State Engineer of Idaho, No. 4489, which was taken up for the use and benefit of the North Side Canal Company.

RIGHT NO. 8.

That the defendant, the SECRETARY OF THE INTERIOR OF THE UNITED STATES, and his successors in office is hereby awarded the use of the waters of the natural flow of Marsh Creek, a tributary of Snake River, in Cassia County, on the lands lying under the canals of the Minidoka Project in Cassia County, Idaho, in the following amount from the following date; 150 second feet from April 10, 1909, hereby designated as Right No. 8.

RIGHT NO. 9.

That the defendant, the SECRETARY OF THE INTERIOR OF THE UNITED STATES, and his successors in office, is hereby awarded the use of the waters of the natural flow of Snake River at Minidoka Dam for power, light, manufacturing, and pumping purposes in the following amount and from the following date: 2,500 second feet from June 15, 1909, and 200 second feet from July 1, 1912, said water to be returned to Snake River below the Minidoka Dam after being used for said power purposes, and hereby designated as Right No. 9.

RIGHT NO. 10.

That the defendant, the SECRETARY OF THE INTERIOR OF THE UNITED STATES, and his successors in office, is hereby awarded the use of the waters of the natural flow of Snake River for the purpose of filling Lake Walcott Reservoir above Minidoka 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.

RIGHT NO. 11.

That the defendants, THE TWIN FALLS NORTH SIDE LAND AND WATER COMPANY and the NORTH SIDE CANAL COMPANY, are hereby awarded the use of the waters of the natural flow of Snake River at Milner Dam, to be diverted on the North Side of the Snake

Sixteen (16) E.B.M.; thence North to the Northeast corner of Section Thirty two (32) Township Six (6) South, of Range Sixteen (16) E.B.M.; thence West to the Northwest corner of Section Thirty one (31) in said Township; thence North to the Northeast corner of Section Twenty four (24), Township six (6) South, Range Fifteen (15) E.B.M.; thence west to the Southwest corner of Section Fifteen (15), Township Six (6) South, Range Fourteen (14) E.B.M.; thence west to the Malad River; thence north along the Malad River and Big Wood River to its inter-section with the South Line of Section Twenty two (22), Township Five (5) South, Range Fourteen (14) E.B.M.; thence west to the Southwest corner of Section twenty three (23) Township five (5) South, Range Twelve (12) E.B.M., thence north to the Northeast corner of section Fifteen (15) in said Township; thence west to the Southwest corner of Section Seven (7), in said township, thence north to the Northwest corner of said section seven (7); thence west to the Northwest corner of section Seven (7), Township Five (5) South, Range Eleven (11) E.B.M.; thence South to Snake River.

It is further ORDERED, ADJUDGED AND DECERNED, until otherwise provided by Statute, the State Engineer of the State of Idaho, or his duly authorized deputy, shall determine what part of the water flowing in the Snake River at the Minidoka and Milner Dams, is storage waters, and what part is natural flow, and provided by the Idaho Session Laws of 1909, entitled; "An Act to provide for the safe guarding of the Rights of these Conservating Public Waters in Reservoirs and Prohibiting Misappropriation of such waters by those having no Right to the Use of the same, and Declaring a Misdemeanor", the amount of the natural flow to be determined as such natural flow would be, if unaffected by the diversions or acts of the parties hereto or any or either of them or by the release of stored water, the natural flow to which the Twin Falls Projects are entitled to be measured to them at the Milner Dam.

It is further ORDERED, ADJUDGED AND DECERNED that the rights and priorities hereinbefore determined and awarded be and the same are each of them quieted and confirmed as against each and every party hereto; and furthermore that each and all claims to the waters of the Snake River by each or all of said parties, adverse to the rights herein awarded and determined, be and they are hereby held for nought and such parties forever barred from asserting same.

Done in Open Court this 20th day of June, 1915.

By the Court,

Edward A. Walters,

District Judge.

Exhibit K

State of Idaho

Lake Walcott

License and Certificate of Water Right

Water License No. 5799
Water District No. 61

Amount..2500..sq.ft.
Priority..12/28/09..---

THIS IS TO CERTIFY that the UNITED STATES RECLAMATION SERVICE ,
of Boise, Idaho , made application for a permit to appropriate the
public waters of the State of Idaho, dated December 14 , 19 09 ; that Permit No. 5799
was issued under said application; that Certificate of Completion of works, with a carrying capacity of 2500
second feet, was issued thereunder on October 14 , 1919 , showing that said works
were completed on the 10th day of May , 1916 ; and that on the 24th
day of September , 1920 ,

BARRY DIBBLE, Project Manager, United States Reclamation Service,
of Burley, State of Idaho, made proof to the satisfaction of the
~~Commissioner of Reclamation~~ of Idaho, of a right to the use of the waters of Snake River,
a tributary of Columbia River, for the purpose of Irrigation & Domestic use,
under Use Permit No. 5799 of the State Engineer, and that said right to the use of said
waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the ~~State~~
~~Commissioner of Reclamation~~ of Idaho, and entered of record in Volume 5 of Licenses, at page 2771, on the 7th
day of February, 1921;

The right hereby confirmed dates from December 28, 1909:

The Point of Diversion is located
in the $\frac{SW}{SE}$ $\frac{1}{4}$ $\frac{NW}{NE}$ $\frac{1}{4}$ Sec. 1, Tp. 9 S., R. 25 E., B.M.
County of Cassia.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 2500 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
			Supplemental water right for Minidoka Project of the United States Reclamation Service.		

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

Commissioner of Reclamation
WITNESS the seal and signature of the said Commissioner, at Boise, Idaho, this 7th day of February, 1921.

Exhibit L



United States Department of the Interior

RECEIVED
JUL 12 2019
BY: _____

OFFICE OF THE SOLICITOR
Pacific Northwest Region, Boise Field Office
960 S Broadway Avenue, Suite 400
Boise, Idaho 83706-6240

July 8, 2019

Mr. Gary Spackman
Director
Idaho Department of Water Resources
322 East Front Street, Suite 648
Boise, Idaho 83702-7371

Subject: Docket No. P-WRA-2017-002

Dear Director Spackman:

I write today on behalf of the Bureau of Reclamation concerning the above referenced contested case proceeding before the Idaho Department of Water Resources. Reclamation appreciates the Department's and the parties' efforts to work through the difficult issues presented in the case.

Reclamation understands that the parties to the contested case have moved the Department for an order approving an interim stipulation entailing two key components, and also staying proceedings. The first component in the stipulation would establish September 15 as the reset date for water right accounting upstream of Milner Dam, consistent with current practice. The second component would limit diversions under Reclamation's Lake Walcott storage right to 2,500 cubic feet per second from September 15 to October 15. The parties have agreed that the stipulation would operate only on an interim basis while the contested case is stayed and until a judicial order is entered to include these terms as remarks in the Snake River Basin Adjudication Final Decree.

Reclamation understands further that the Department has expressed reluctance to approve this stipulation until it hears the views of Reclamation as the holder of legal title to the Lake Walcott storage right. Because this negotiated approach coincides with much of Lake Walcott's operational history, Reclamation supports the effort to have this storage right modified, provided a judicial order is entered that establishes through remarks the September 15 reset date and 2,500 cubic feet per second diversion limitation from September 15 to October 15. Please know, however, that Reclamation must also obtain approval from the Department of the Interior and the Department of Justice to support the effort formally.

Pending issuance of such a judicial order, Reclamation does not object to interim administration according to a September 15 reset date because, as mentioned, it is consistent with administration

over recent decades. Nonetheless, Reclamation believes that partially subordinating the Lake Walcott right temporarily or permanently requires judicial approval.

Sincerely,

A handwritten signature in dark ink, appearing to be 'J. Williamson', written over a horizontal line.

Jeremiah I. Williamson

Cc: Parties identified in the "Additional Service List in the Matter of the Petition Regarding Storage Reset in Water District 01 filed by Milner Irrigation District"