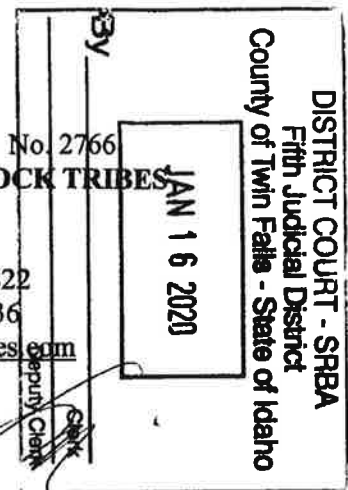


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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

)
) **Subcase Nos.: Attachment A**
)
) **TRIBES' REPLY TO STATE OF**
) **IDAHO'S CONSOLIDATED**
) **RESPONSE TO JOINT MOTION**
) **TO MODIFY PARTIAL DECREES**
) **FOR PURPOSE OF ADDING**
) **DIVERSION RATE AND "RESET"**
) **ADMINISTRATIVE REMARKS**
)
)

COME NOW, the Shoshone-Bannock Tribes ("Tribes") by and through their undersigned attorneys of record, and hereby submit this reply to the *State of Idaho's Consolidated Response to Joint Motion to Modify Partial Decrees for Purpose of Diversion Rate and "Reset" Administrative Remarks* (December 20, 2019) ("State's Response"). The Tribes are parties to the underlying *Joint Motion to Modify Partial Decrees for Purpose of Adding "Reset" Administrative Remarks* ("Joint Motion") as well as the Stipulated Settlement being presented to

**REPLY TO STATE OF IDAHO'S CONSOLIDATED
RESPONSE TO JOINT MOTION TO
MODIFY PARTIAL DECREES**

this Court.¹ The State's Response opposes the Joint Motion and addresses both the Surface Water Coalition's memorandum in support of the Joint Motion ("SWC Brief"), which the Tribes incorporated, and the Tribes' memorandum in support of the Joint Motion ("Tribes' Brief").² The Tribes concur in and adopt by reference the arguments set out in the concurrently filed Reply in Support of Joint Motion to Modify Partial Decrees for Purpose of Diversion Rate and "Reset" Administrative Remarks ("SWC Reply") and United States' Reply in Support of Joint Motion to Modify Partial Decrees ("U.S. Reply"). The Tribes file this separate reply to the State's Response to address the arguments specific to the Tribes that support the unique and compelling circumstances that justify the relief sought in the Joint Motion.

INTRODUCTION

After years of good faith, but often-difficult negotiations, all parties to the Reset Contested Case before the Idaho Department of Water Resources ("IDWR"), and the United States Bureau of Reclamation ("USBR"), a non-party to the Reset Contested Case, reached a Stipulated Settlement which allows for final resolution of the longstanding and complex reset dispute in Water District 01. This Stipulated Settlement provides agreement on three critical, interlocking and equally-necessary provisions. First, it provides "Operative Language" defining September 15th as the annual reset date for the upper Snake River basin.³ Second, it provides

¹ See Ex. G to Travis Thompson Declaration In Support of Joint Motion to Modify Partial Decrees For Purpose of Diversion Rate and "Reset" Administrative Remarks (Oct. 30, 2019), Stipulation and Joint Motion for Order Approving Stipulation / Joint Motion for Stay (hereinafter "Stipulated Settlement"), IN THE MATTER OF THE PETITION REGARDING STORAGE RESET IN WATER DISTRICT 01 FILED BY MILNER IRRIGATION DISTRICT [HEREINAFTER "RESET CONTESTED CASE"], Docket No. P-WRA-2017-002 (April 10, 2019).

² State's Resp. at 2 n.1.

³ See Stipulated Settlement at 5.

“Operative Language” limiting the rate of diversion for the USBR’s storage water right for Lake Walcott (1-219) to 2,500 cubic feet per second (“cfs”) from September 15th to October 15th.⁴ Third, it provides that the parties must present the above “Operative Language,” along with a motion pursuant I.R.C.P. 60(b), to this Court for inclusion as remarks in the Snake River Basin Adjudication (“SRBA”) Final Decree.⁵ The requirement to incorporate the remarks into the SRBA Final Decree, and therefore the relief requested in the Joint Motion, is an integral part of the Stipulated Settlement and represents the only agreed-upon mechanism available to the parties to reach a comprehensive and permanent resolution of the underlying lengthy judicial and administrative proceedings.⁶ The Stipulated Settlement and the relief requested pursuant to the Joint Motion is limited in scope, is necessary for the efficient administration of the rights, and is unopposed by any other water user in the basin.

Indeed, the State does not oppose the substantive elements of Stipulated Settlement defining September 15th as the annual reset date for the upper Snake River basin and limiting the rate of diversion for the USBR’s Lake Walcott storage right.⁷ The State does, however, oppose the Joint Motion’s request, and the Stipulated Settlement’s requirement, to modify the SRBA Partial Decrees to include these agreed-upon reset administrative remarks.⁸

⁴ *Id.*

⁵ *Id.*

⁶ *See* Tribes’ Br. at 3, 13.

⁷ State’s Resp. at 2–3.

⁸ *Id.* at 3.

Rather than recognizing the significance of the Stipulated Settlement and how its key pieces fit together to provide the opportunity for this negotiated solution to the reset dispute, the State picks and chooses the parts of the settlement it supports and then invents its own preferred mechanism to implement the “Operative Language” that no party to the Reset Contested Case, nor the USBR, has agreed to. Specifically, the State proposes that the “agreed-upon ‘reset’ date and diversion rate limitation can and should be set out in a stipulation to be submitted to the Director [of the IDWR (“Director”)] in the pending contested case addressing ‘reset,’” with the parties thereto jointly moving the Director for an order instructing the Watermaster to reset on the specified date and also to limit diversion under the Lake Walcott storage right.⁹

As demonstrated below, the State’s invented remedy picks apart the Stipulated Settlement and removes an integral element of it, the result of which is to leave the parties with no settlement at all, much less one that could be submitted to the Director. Without the *entire* Stipulated Settlement, including the provision for entering a judicial decree, there is no negotiated agreement. The State’s fictive remedy ignores the position of the USBR that it can agree to the modification of the flow rate for its Lake Walcott right *only* if it is accomplished through judicial decree. Further, even if the USBR could agree to an administrative settlement, such an Order by the Director would be unacceptable because it would be far from permanent and therefore would leave the Tribes and other water users with a high degree of uncertainty in the administration of these rights moving forward.

⁹ *Id.*

To support its own preferred remedy, the State relies on hyper-technical arguments, misconstrues the nature of the underlying dispute as one concerning the administration of water rights in priority, and misstates the Tribes' long involvement in this dispute. The State's Response is riddled with inaccuracies and mischaracterizations, large and small, regarding the Tribes. Of particular concern, the State casually dismisses the importance and relevance of the 1990 Fort Hall Indian Water Rights Agreement ("FHA") to this dispute, and would have the Court ignore that the FHA has been incorporated into the SRBA Final Unified Decree.¹⁰ Nor does the State address, much less explain, how its invented remedy establishes the permanence and finality that is a necessary element of this negotiated resolution. The State's position and brief only further serve to demonstrate the necessity for a permanent and comprehensive resolution to this dispute, as opposed to continuing to allow the State to exercise its purported discretion to administer water rights in violation of the Tribes' rights under the FHA and the SRBA Final Unified Decree.

ARGUMENT

The State's Response boils down to two main arguments: that reopening the partial decrees is unnecessary because the State has its own invented remedy that would work just as well; and that the Rule 60(b) standard is not met because the circumstances here are not "unique and compelling," and granting the motion would undermine the permanence of the SRBA Final Unified Decree itself because some unspecified participants would use it as a basis to come forward with motions challenging the finality of the decree. The State's Response fails on both

¹⁰ *Id.* at 47–49.

counts. First, there is no alternative remedy available to settle this dispute (as the parties themselves, through their diligent efforts over several years, have learned), and the State's invented remedy is a fiction. Second, there are no other circumstances like those presented in this case, nor does the State's Response point to any. These circumstances, involving a negotiated settlement among 35 spaceholders, a federally-recognized Indian tribe (relying on the terms of a negotiated settlement of its *Winters*'¹¹ rights claims), and the United States, regarding storage reservoirs on the Upper Snake River, are not to be found anywhere else. The circumstances here are unique and compelling.

1. The Joint Motion is the *Only* Remedy Available to Resolve the Dispute without Costly and Extensive Litigation

The State's keystone argument—that the remedy sought here is not necessary—is based on the State's creation of a fictional alternative settlement mechanism, a mechanism that is simply not available as a means of resolving this complex and longstanding dispute. The Joint Motion is the only agreed-upon solution, and thus the only available mechanism to permanently resolve the reset dispute. A fictional administrative settlement, to which at least two of the key parties to the settlement cannot and will not agree, is no alternative at all.

A. The Joint Motion is the Result of Good Faith Negotiations and Represents the Sole Means of Resolving the Dispute Short of Extensive Litigation

As stated above, the Stipulated Settlement reached between all parties to the Reset Contested Case and the USBR provides that the parties must present the "Operative Language," along with a motion pursuant I.R.C.P. 60(b), for inclusion as remarks in the SRBA Final

¹¹ *Winters v. United States*, 207 U.S. 564 (1908).

Decree.¹² The requirement to incorporate the remarks into the SRBA Final Decree, and therefore the relief requested in the Joint Motion, is an essential component of the Stipulated Settlement.¹³

The parties have diligently pursued the resolution of this lengthy and complex dispute resulting in a Stipulated Settlement that is comprehensive and, crucially, permanent. The Stipulated Settlement creates finality for the parties and does not undermine the finality of any other water adjudication or proceeding because all other adjudications and proceedings are similarly subject to I.R.C.P. 60(b)(6), which requires a showing of *unique* and *compelling* circumstances that justify relief. Moreover, the parties to the Joint Motion do not request relief pursuant to I.R.C.P. 60(b)(6) to relitigate any issue previously decided in the adjudication. Rather, they use it because the storage rights at issue have been finally decreed, and it is the only mechanism available to the parties to implement this global, permanent settlement of the reset dispute, which was still pending at the time the final decree was issued.

Importantly, I.R.C.P. 60(b)(6) relief is an appropriate mechanism for implementation of the Stipulated Settlement because the addition of the remarks is “narrow in scope and necessary for the efficient administration” of the storage water rights.¹⁴ The Stipulated Settlement and the relief requested pursuant to the Joint Motion are unopposed by any other water user in the basin and no prejudice will result in granting the requested relief. Indeed, the Stipulated Settlement arose from a public-record, contested case before the Director, in which all parties with a

¹² Stipulated Settlement at 5.

¹³ See Tribes’ Br. at 3, 13.

¹⁴ See Order Granting Motion to Alter or Amend Partial Decrees; Order of Amended Partial Decree, *In Re SRBA Case No. 39576*, 5 (July 19, 2019); see also State of Idaho, Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-314, and 63-318, *In re SRBA Case No. 39576*, 2–3 (Feb. 19, 2019) (State of Idaho requesting similar relief in Administrative Basin 63).

potential stake in the issue intervened, and all those parties signed on to the Stipulated Settlement. Further, the Joint Motion filed in this matter involves notice to all parties in the related subproceedings, and none have objected.

B. The State's Proposed Alternative Remedy is a Fiction and Is Not an Available Means of Resolution

Despite the clear agreement of the both the parties to the Reset Contested Case and the USBR that it is necessary to incorporate the reset remark into the SRBA Partial Decrees, as well as change a portion of a decreed water right held by the USBR for storage water in Lake Walcott, the State objects to this proposed procedure, proposing instead that the “agreed-upon ‘reset’ date and diversion rate limitation can and should be set out in a stipulation to be submitted to and approved by the Director ... in the pending contested case addressing ‘reset...’.”¹⁵ The State reasons that because the Partial Decrees are silent with respect to reset, the issue of reset is purely one of administration which is committed to the Director.¹⁶

The State's invented solution is, at its heart, based upon a fundamental mischaracterization of the nature of the dispute and the negotiated settlement. This mischaracterization leads the State to conclude, incorrectly, that this dispute is about the priority of previously decreed rights that can be resolved through the administration of rights in priority, which is within the purview of the IDWR. However, the Stipulated Settlement here involves something fundamentally different, the settlement of a thicket of disputed claims: claims as to the meaning and scope of the Tribes' storage water rights as bargained-for in the FHA (and

¹⁵ State's Resp. at 3.

¹⁶ *Id.* at 34.

incorporated into the Final Unified Decree); claims by the members of the SWC as to the meaning and scope of the “period of use” language in the decrees; and claims regarding the scope and limits of the Director’s discretion in carrying out reset and accrual accounting in this particular and unique context. In fact, the State incorrectly suggests (by quoting one party’s brief) that all of the parties in the Reset Contested Case agreed that the Director had broad discretion to administer the reset and accrual accounting in this context.¹⁷ The Tribes, in contrast, argued that the Director’s discretion here was in fact *limited* by the FHA and the Michaud Contract (which it incorporated).¹⁸ Further, a central component of the resolution is the voluntary participation of and agreement by the USBR to diminish its decreed Lake Walcott storage water right. These are all issues beyond simple administration of priority, and can be addressed only by judicial decree.

Seeking judicial inclusion of the reset and diversion rate remarks in the SRBA Final Decree is a key component of the Stipulated Settlement, and without this portion of the Stipulated Settlement there is in fact no settlement at all.¹⁹ Indeed, as we explain below in the next sections of this brief, there are at least two parties to the Stipulated Settlement that are unable to agree to an administrative order as the means of implementing the substantive provisions of the Stipulated Settlement—the USBR and the Tribes.

¹⁷ State’s Resp. at 20 n.65.

¹⁸ See Shoshone Bannock Tribes’ Brief on “Threshold Issue” in the Contested Case (January 19, 2018) *at passim*, Ex. A to Second Declaration of Edmund Clay Goodman (January 15, 2020) (“Second Goodman Dec.”).

¹⁹ See Stipulated Settlement at 5.

C. The USBR Cannot Agree To Seek An Administrative Order

For the purposes of this subsection, we adopt and incorporate by reference the arguments made in the United States' Reply.

As proposed by the State, an administrative order from the Director would be based upon a hypothetical stipulated settlement of the Reset Contested Case that includes the USBR's consent to limit its diversion under its Lake Walcott storage water right. However, the USBR is not a party to the Reset Contested Case. As the State is well aware, the USBR has taken the consistent position that it would support the effort to have its storage water right modified, provided a judicial order is entered, and that judicial approval is required to add the diversion rate limitation to the right.²⁰ As such, contrary to the State's assertions, the USBR is not "free to agree" to this limitation that would allow the Director to issue the administrative order.²¹

Without the limitation on the USBR's Lake Walcott storage right, the parties are left without a negotiated solution to the reset dispute. And the only way that USBR will agree to such a limitation is by amending the decree.

D. The Tribes Cannot Agree To Resolution Through an Administrative Order

The Tribes cannot agree to seek the administrative order by the Director as proposed by the State for several reasons. First, as explained above, the USBR would not be a participant to

²⁰ State's Resp. at 22; *see also* Ex. 25 to Declaration of Michael Orr in Support of State of Idaho's Consolidated Response to Joint Motion to Modify Partial Decrees for Purpose of Diversion Rate and "Reset" Administrative Remarks, Letter from Jeremiah I. Williamson, United States Department of the Interior, Office of the Solicitor, to Gary Spackman, Director, Idaho Department of Water Resources (July 8, 2019) ("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.").

²¹ *See* State's Resp. at 35.

an administrative order and will not agree to the modification of its storage water right in the administrative case. Even if the USBR could agree, any such administrative order would in no way be binding on the USBR as a non-party to the proceeding. This would leave the Tribes without a permanent solution as it allows the USBR to change its position at a later time resulting in uncertainty for the Tribes and other water users in the administration of the reservoir system in the future.

Second, the State's proposed implementation of the substantive pieces of the Stipulated Settlement through an administrative order lacks the permanence and finality required by the Tribes to reach settlement of its claims here, which concern impacts to its water rights as determined in the FHA and incorporated in the SRBA Final Decree. For example, a future Director could review the order at his or her own motion or upon request from another party to the underlying settlement based upon any party's change in positions at a later date.

The State, in repeatedly asserting that the Director has discretion to adopt the Stipulated Settlement, fails to note that it has in the past argued, with some success, that such discretion would also allow the IDWR to change its position—particularly if the State asserts that such change was based on a change in policy.²² Any such order would thus not provide the Tribes

²² See, e.g., *Bldg. Contractors Ass'n of Sw. Idaho v. Idaho Pub. Util. Comm'n*, 151 Idaho 10, 15, 253 P.3d 684, 689 (2011) (holding that where the Commission made a policy change, it was exercising its legislative functions, and that "so long as regulatory bodies adequately explain their departure from prior rulings so that a reviewing court can determine that their decisions are not arbitrary or capricious, orders based upon positions substantially different than those taken in previous proceedings can be upheld") (quoting *Intermountain Gas Co. v. Idaho Pub. Util. Comm'n*, 97 Idaho 113, 119, 540 P.2d 775, 781 (1975)). *Intermountain Gas Company* involved a State regulatory body exercising both legislative, as well as quasi-judicial functions—including scheduling hearings, receiving testimony, hearing witnesses, and issuing orders—to determine natural gas rates.

adequate protection in the future, the very protection that is at the heart of the current Stipulated Settlement, which seeks to ensure a permanent resolution to the reset dispute.

Third, the State's proposal leaves the Tribes' claims regarding its negotiated water rights to the discretion of the Director. The State makes clear its assertion that the issue of reset is "purely one of administration" and therefore committed to the Director.²³ Leaving discretion in the hands of future IDWR directors is, of necessity, a path that the Tribes cannot agree to take. And for good reason. The Director was acting in his discretion when, upon a request by Milner Irrigation District, he initiated formal contested case proceedings and, without a hearing, directed the Watermaster to move the storage reset date to January 1 despite this being a drastic change in decades of administration of these water rights.²⁴ The effect of this discretionary action by the Director greatly impacted the Tribes' water rights as negotiated in the FHA and incorporated into the SRBA Final Decree. This exercise of the Director's purported discretion demonstrates why the Tribes need a judicial order to ensure the finality of the Stipulated Settlement.

And finally, as explained below, the State's mischaracterizations as to the FHA and other issues further demonstrates why the Tribes require permanence in any negotiated settlement of this reset dispute.

²³ See State's Resp. at 34.

²⁴ Tribes' Br. at 11 n.12; Letter to Lyle Swank, Water District 01 Watermaster from Gary Spackman, Director IDWR, Re: Reset of Reservoir Water Rights and Recharge (Oct. 27, 2017), Ex. D to Declaration of Edmund Clay Goodman in Support of Memorandum in Support of Joint Motion to Modify Partial Decrees for Purposes of Diversion Rate and "Reset" Administrative Remarks (Oct. 30, 2019) ("First Goodman Dec.").

E. State's Mischaracterizations Underscore the Need for Judicial Remedy

First, the State asserts that “[a]t some point the during the course of those proceedings, the Coalition and the Tribes apparently decided that the Lake Walcott storage right *should have been* decreed with the 2,500 CFS diversion rate limitation....”²⁵ However, neither the Tribes nor SWC, nor any other party, took this position. Rather, the parties could not reach a settlement of this contentious issue without the USBR agreeing to diminish its Lake Walcott right, not that the right “should have been decreed” with the cap in the first instance. The distinction is subtle, but critically important. The State relies on this mischaracterization of the parties’ position to argue that the parties had the opportunity to resolve this question in the SRBA, but simply failed to do so because at the time they did not see it as a concern.²⁶ Rather, the circumstance present here is that the parties could only reach a resolution of the issue once USBR came on board and committed—as part of the settlement—to seek a diminishment of its decreed Lake Walcott right.

Second, the State acknowledges the parties’ need for permanence and finality, but dismisses that reality with the catchy but ultimately empty assertion that doing so comes at a “great cost: the ‘permanence’—i.e., finality—of the SRBA itself.”²⁷ But the State fails to point to an even remotely analogous situation for which this case could serve as precedent, and repeatedly dismisses or diminishes the truly novel and unique circumstances involved here—not to mention misconstruing the Tribes’ involvement and the relevance of the FHA.²⁸

²⁵ State’s Resp. at 28 (emphasis added).

²⁶ *Id.*

²⁷ State’s Resp. at 32.

²⁸ *See infra* at 15–20.

Third, in seeking to distinguish this resolution from the successful resolution of the Basin 63 matter through a similar mechanism, the State asserts that the Basin 63 matter was more complex because it had involved litigation up and down to the Idaho Supreme Court, as well as other contested cases and matters, all of which were interconnected and resolved through this one mechanism.²⁹ Yet, if this case is not resolved through the Stipulated Settlement, there is a high likelihood of litigation that will raise complex questions involving interpretation of key language in the decrees, the scope of the Director's discretion, the scope of the FHA, and the Tribes' takings claims. The State's position appears to be that the parties will not have a dispute sufficiently ripe or complex for a Rule 60(b) motion until they spend years in litigation and hundreds of thousands of dollars in attorney fees to get to the same stipulated settlement.

Fourth, it is important to clarify that the reset computation methodology at issue here is, contrary to the State's repeated assertions, distinct from the distribution of water according to the decrees. In resolving a dispute in the SRBA, the Idaho Supreme Court made clear that the distribution of water is distinct from the method of accounting applied by the Director.³⁰ Conflating the method of accounting for the accrual of water with the actual allocation and delivery of water rights serves to confuse the issues. Stored water rights "involve complexities not associated with other categories of water rights, including the right to store water for future use."³¹

²⁹ State's Resp. at 39–44.

³⁰ *In re SRBA (Basin-Wide Issue 17)*, 157 Idaho 385, 392–94, 336 P.3d 792, 799–801 (Idaho, 2014).

³¹ *Ballentyne Ditch Co. et al. v. IDWR, et al. (In the Matter of the Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 63)*, Case No. CV-WA-2015-21376, MEM. DEC. AND ORDER (Idaho 4th Jud. Dist. 2016) at 6.

In sum, the State's invented remedy is illusory because without the parties' agreement as to the mechanism for inclusion of the remarks in the SRBA Partial Decrees there is no Stipulated Settlement. The State's proposal lacks the finality needed to achieve protection of the Tribes' bargained-for water rights and the efficient administration of the water rights moving forward. In contrast, inclusion of the requested remarks into the Partial Decrees pursuant to I.R.C.P. 60(b)(6) is justified because this case presents unique and compelling circumstances as the requested relief is limited in scope, protects the Tribes from a great inequity, provides finality to a longstanding and complex litigation, comes from a global settlement that will not prejudice any water users, and is necessary for the efficient administration of the water rights moving forward.

2. The Tribes' History with Regard to Their Bargained-For Storage Water Rights Present Unique and Compelling Circumstances that Require Incorporating the Stipulated Settlement into the Partial Decrees to Avoid an Inequitable Result

The Tribes concur that the arguments set out in the SWC Brief and SWC Reply demonstrate sufficient unique and compelling circumstances to justify the requested Rule 60(b) relief. But the Tribes also assert arguments specific to the Tribes' unique claims in this litigation that simply underscore that resolution of such claims provide additional unique and compelling circumstances supporting the requested relief. The State's response to the Tribes' arguments³² are based on an unfounded dismissal of the significance of the FHA as well as on numerous misrepresentations of the Tribes' position and participation. These arguments not only miss the mark; that the State felt compelled to offer them here affirms the wisdom of and need for a judicial decree to protect the bargained-for settlement expressed and codified in the FHA.

³² State's Resp. at 47-59.

A. The FHA Was Approved by SRBA Decree, and the Tribes' Federal Contract Storage Rights Are Unique and Binding on the Director

One of the most troubling aspects of the State's Response to the Tribes' Brief is its casual and unfounded dismissal of the relevance of the FHA to the dispute being resolved through the Stipulated Settlement. Most obviously, the Tribal storage rights at issue in the reset dispute are a critically-important component of the FHA and the Tribal Water Bank established thereunder.³³ So the FHA is, of necessity, at the very heart of this dispute from the Tribes' perspective.

The Tribes, the United States, the State of Idaho, and various private parties spent five years negotiating the terms of that Agreement in order to "settle the nature and extent of the Tribes' water rights reserved under the *Winters* doctrine within the Snake River Basin in Idaho to avoid litigation."³⁴ Those negotiations arose out of the SRBA, were specifically directed by Idaho statute,³⁵ and were based on the Tribes' "longstanding tradition of favoring negotiation as a means of resolving conflicts."³⁶ The Agreement resolved with finality Tribal claims that would otherwise have taken decades to adjudicate. That resolution provided certainty and clarity for numerous stakeholders in the upper Snake River basin, allowing farmers, ranchers, cities, and other stakeholders to plan and develop with much greater certainty. It likely saved the parties hundreds of thousands of dollars in attorney and expert fees. It also provided for significant

³³ See FHA § 7.3, Ex. A to First Goodman Dec.

³⁴ *Id.*, §§ 3.2, 3.10.

³⁵ H. Con. Res. 16, 48th Idaho Leg., 1st Sess. 1985.

³⁶ FHA §§ 3.1–3.3, Ex. A to First Goodman Dec.

contributions by the United States for purchase of land, grazing rights, and other mitigation.³⁷

And it recognizes that the Tribes' water rights claims, settled under the Agreement, are "unique."³⁸

Yet the State asserts that since the federal storage rights (that were described as "Tribal Water rights" under the FHA³⁹) are defined and quantified under distinct partial decrees, the FHA is not binding on the Director for the purposes of the Stipulated Settlement. According to the State, "[t]here is no Idaho statute or court decision that requires the Director to administer the storage rights in the Upper Snake Basin on the basis of the *FHA* or the Tribes' 'federal contract storage rights.'"⁴⁰ This assertion is simply wrong, on several levels.

The State was a party to the FHA. The Agreement was executed by the Governor and the Attorney General,⁴¹ and was "approved, ratified and confirmed" by the Idaho Legislature.⁴² The Agreement was also approved by the U.S. Congress,⁴³ and was submitted to the SRBA Court for approval "as a decree in the SRBA," which, approved the FHA in a partial final consent decree which ordered and decreed that "the provisions of the [Agreement] for which this court has jurisdiction are ratified, confirmed and approved and ... the water rights of the United States for

³⁷ *Id.*, Art. 13.

³⁸ *Id.*, § 11.2.

³⁹ The storage water rights described in Section 7.3 of the FHA fall under the general definition of "Tribal Water rights." FHA § 4.54, Ex. A to First Goodman Dec.; *see also id.*, preamble paragraph to Article 7, which describes all the water rights set out in Article 7—including the storage water rights—as "Tribal water rights."

⁴⁰ State's Resp. at 49.

⁴¹ FHA at 74 (signatures), §§ 5.1, 5.2 (authority of officials to execute), Ex. A to First Goodman Dec.

⁴² Chapter 228, §1, 1991 Idaho Sess. Laws 547.

⁴³ Fort Hall Indian Water Rights Act of 1990, Pub. L. No. 101-602, § 4, 104 Stat. 3059, 3060 (1990).

the [Tribes] in the Upper Snake River Basin, for the Bureau of Indian Affairs, Fort Hall Agency, and the Fort Hall Irrigation Project are as follows,” followed by a recitation of terms from the Agreement.⁴⁴ The Partial Final Consent Decree was revised on August 13, 2014.⁴⁵ The Revised Partial Final Consent Decree notes that the Consent Decree “ratified, confirmed, and approved the provisions of the [FHA].”⁴⁶ The Revised Partial Final Consent Decree ordered and decreed that “the provisions of the [FHA] for which this court has jurisdiction are ratified, confirmed, and approved,” followed by a recitation of terms from the FHA.⁴⁷ Among the terms recited is the provision providing for the Tribes’ federal contract storage rights in the American Fall and Palisades Reservoirs provided in § 7.3.1 of the FHA.⁴⁸

Ultimately, in August 25, 2014, the SRBA Court incorporated the Revised Partial Final Consent Decree into the Final Unified Decree by reference.⁴⁹ The FHA is thus an integral component of the Final Unified Decree resolving the SRBA, and the separate partial decrees underlying the Final Decree cannot be cherry-picked—as the State attempts here—to avoid the obligations it agreed to assume in exchange for settling the Tribes’ *Winters*’ claims.

Under the FHA the Tribes’ storage rights are *not* identical to other storage rights, because certain additional protections adhere to them. The unique nature and importance of these storage

⁴⁴ Partial Final Consent Decree Determining the Rights of the Shoshone Bannock Tribes to the Use of the Water in the Upper Snake River Basin (Aug. 2, 1995) (“Partial Final Consent Decree”) at 2.

⁴⁵ See Revised Partial Final Consent Decree Determining the Rights of the Shoshone Bannock Tribes to the Use of the Water in the Upper Snake River Basin (Aug. 13, 2014) at 2 (“Revised Partial Final Consent Decree”).

⁴⁶ *Id.*

⁴⁷ *Id.* at 6.

⁴⁸ *Id.* at 14–15.

⁴⁹ Final Unified Decree at 8, Ex. B to Second Goodman Dec. (emphasis added).

water rights to the Tribes was expressly articulated in Section 7.3.6 of the FHA, which identified, among others, the following purpose of the Shoshone Bannock Water Bank: to “provide a mechanism for the Tribes to realize the value of their federal contract storage rights resulting from settlement of this litigation.”⁵⁰ To ensure that the Tribes would “realize the value” of those rights, the FHA also provided that those storage rights “shall not be subject to any limitation based on,” among other things, the following: “any reduction of the quantity of water available under any other existing water rights since any such reductions are mitigated by the express federal commitments in Article 12.3”; “any conflict with the public welfare or local public interest of the citizens of Idaho or the conservation of its water since any such conflicts are mitigated by the express federal commitments in Article 12.3.”⁵¹ While no specific amount of water was guaranteed, what was recognized and protected in Section 7.3 of the FHA was a reservoir system operation that provided a level of predictability for the Tribes’ storage water rights, one that maximized the amount of storage accrual.

The State also makes the hyper-technical yet wholly-irrelevant argument that the Tribes’ storage water rights are not *Winters*’ reserved rights.⁵² While it is true that such storage rights are not *Winters*’ rights themselves, these Tribal water rights were incorporated into, defined under, and protected by the FHA as part of the overall settlement of the Tribes’ *Winters* right claims.⁵³ These rights are not defined nor treated differently than *Winters*’ rights for the purposes of the

⁵⁰ FHA § 7.3.6(iv), Ex. A to First Goodman Dec.

⁵¹ *Id.* §§ 7.3.5, 7.3.5(ii), 7.3.5(iii).

⁵² State’s Resp. at 49–50.

⁵³ FHA §§ 10.4 and 11.2, Ex. A to First Goodman Dec.

FHA; rather, they have the same status as “Tribal water rights” as do the reserved rights protected under the *Winters* doctrine because they were incorporated into the Agreement as part of the settlement of those claims (including *Winters*’ claims that the Tribes compromised out in exchange for the finality and protection of the FHA). These rights are not to be subjected to some of the limitations that might apply to other contract storage rights.⁵⁴

The State’s attempt to treat these Tribal water rights as distinct from and not impacted by the promises, representations, and bargains made in the FHA flies directly in the face of the Agreement and the Final Unified Decree that incorporates it. That the State is willing to make such an argument provides yet another compelling reason for the Tribes to seek finality through a judicial decree rather than leaving such decisions to the purported discretion of a State official.

B. The Tribes’ Need for Finality is a Central Component of the Stipulated Settlement and Thus of the Requested Relief

As shown above, inclusion of the reset and diversion rate administrative remarks into the SRBA Partial Decrees is a crucial component of the Stipulated Settlement, and no alternate remedy, including an order by the Director in the Reset Contested Case, would permit this negotiated approach to be implemented with the element of finality necessary to protect the Tribes’ rights.⁵⁵ In the absence of implementing the Stipulated Settlement, there is the likelihood of protracted litigation, including the Tribes’ claim of breach of the FHA and of a taking.

⁵⁴ See *id.* § 7.3.5.

⁵⁵ See *supra* 8–12.

The State asserts that the parties' wish to avoid future litigation is not unique and compelling, but rather is "simply a fact of life under the prior appropriation doctrine priority and priority administration."⁵⁶ But the State misunderstands the issue of remedy raised by the Tribes.⁵⁷ It is not only the parties' desire to avoid future litigation that is unique and compelling. The parties to the Reset Contested Case and the USBR have reached a global negotiated settlement and the only mechanism to implement settlement is through the requested limited amendments to the Partial Decrees.⁵⁸ The Tribes understand that there is the possibility of continuing to litigate the contested case, including judicial review of that case. However, as the USBR is not a party to the Reset Contested Case, any resolution to the contested case would necessarily not involve the USBR and the key component of the Stipulated Settlement that the USBR agree to a limitation of the flow rate for its Lake Walcott storage right. Without the USBR's involvement, the outcome of such litigation is uncertain but undeniably will *not* be what all parties to the Joint Motion seek here, the implementation of the agreed-upon approach to resolution of the reset dispute.

The State argues the Tribes' claim of a taking based on the Director's administration of water rights is not unique and compelling.⁵⁹ Rather, the State alleges that this is "one of the more common" arguments made by water right holders when they disagree with the Director's administration, including the assertion by one water right holder that their water is or will be

⁵⁶ State's Resp. at 54.

⁵⁷ See Tribes' Br. at 20–21.

⁵⁸ See *supra* at 8–12.

⁵⁹ State's Resp. at 56.

distributed to some other water user.⁶⁰ The State in fact goes on to argue that there is no “taking” when the Director regulates a junior off the system in favor of a senior water right holder, and that juniors often improperly assert a taking anytime they are regulated.⁶¹ This statement is catchy but wrong. As is well-established, a junior can suffer an injury to its water right when regulated in favor of a senior under certain circumstances, such as when a senior changes a place of use or other element of the senior water right, or abandons the right but seeks to use it again.⁶² The Tribes’ argument is that a similar injury to the Tribes’ water right would occur from such a drastic change in administration, and that would give rise to a takings claim.

Again, the State’s arguments misunderstand the issue of remedy raised by the Tribes. The Tribes are not arguing that a takings claim is unique to the Tribes or that the sole existence of such a claim creates unique and compelling circumstances to justify relief pursuant to I.R.C.P. 60(b)(6). Rather, what is unique and compelling is that the parties to the Reset Contested Case and the USBR have reached a global settlement and that the only mechanism to implement this agreed-upon approach is through the requested limited amendments to the Partial Decrees. The Tribes raise the takings claim to demonstrate that even that litigation would not provide the remedy sought here: the implementation of the terms of this negotiated settlement among the parties to the Reset Contested Case and the USBR. Moreover, without the implementation of the agreed-upon approach, the inevitable litigation flies in the face of judicial efficiency.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See *Jenkins v. State, Dept. of Water Resources*, 103 Idaho 384, 387–88, 647 P.2d 1256, 1259 (Idaho, 1982).

Notwithstanding, the State's arguments with respect to the validity of the Tribes' takings claim again demonstrate a lack of regard for and misunderstanding of the FHA, its meaning within the SRBA, and the State's obligations to administer water rights in accordance with those judicially-decreed rights. Moreover, a taking claim against the State of Idaho by the Tribes is fundamentally not about whether the Tribes' water is or will be distributed to some other water user out of priority.⁶³ Rather, it is based on the fact that IDWR's proposed change in reset accounting hinders the Tribes from receiving the full amount of their property right, negotiated in the FHA and incorporated into the SRBA, in a way that amounts to a physical taking.⁶⁴

C. The Tribes' Justifiable Expectations Under the FHA Concerning Reset Present Unique and Compelling Circumstances

The State contests the expectations of the Tribes that the reset accounting mechanism in effect before and at the execution of the Agreement would continue to be operated in the same manner. First, the State argues that the Tribes did not participate in Basin Wide Issue 17, the Late Claims, or negotiations that produced the *Basin 1 Stipulation*,⁶⁵ and that this "casts doubt" on the Tribes' stated expectations.⁶⁶ This assertion ignores several critical facts. The Tribes have limited resources to expend on legal and expert fees, and have to carefully choose where and when they get involved. The Tribes actively monitored and conferred about the matters that produced the *Basin 1 Stipulation*, and determined that enough of the existing parties were aligned with the

⁶³ State's Resp. at 56.

⁶⁴ See Tribes' Br. at 20.

⁶⁵ See State's Resp. at 13–14.

⁶⁶ See State's Resp. at 50.

Tribal position to ensure that the Tribes' storage rights would be protected (USBR was a party to the *Basin 1 Stipulation*); the Tribes were prepared to intervene when and if that changed. It did not, and intervention and active participation was not necessary.⁶⁷

By contrast, as soon as the Tribes were made aware of the potential dispute over the reset issue, the Tribes engaged in negotiations, because there were no other parties whose interests were exactly aligned with theirs and who could be relied upon to take a position that would protect the Tribes' storage water rights.⁶⁸ The State cites to a series of transcripts of status conferences regarding the reset negotiations to argue that the Tribes did not participate, but the transcripts in fact show otherwise. Although the Tribes were not a party to the subcase at the time of the status conferences, the parties reported to the Court that the Tribes were engaged and reviewing a settlement affecting their rights. In the first of several status conferences cited by the State, for example, the attorney for the State informed the Court: "The state and water users have prepared a proposed reset provision, which has been provided to the United States and the Tribe. Earlier this week we had a conference call with the United States and Tribe to brief them on the reset issue. They have that language under advisement."⁶⁹ Later status conferences were to the same effect.⁷⁰

⁶⁷ See Second Goodman Dec., ¶ 3–4.

⁶⁸ See *id.*, ¶ 5.

⁶⁹ Ex. 4 to the Declaration of Michael C. Orr in Support of State of Idaho's Consolidated Response to Joint Motion, Reporter's Transcript, SRBA Subcases 1-219, et al., Status Conference ("Tr.") (Aug. 4, 2016) 7–8.

⁷⁰ Ex. 4 to the Declaration of Michael C. Orr in Support of State of Idaho's Consolidated Response to Joint Motion, Tr. (Sept. 12, 2016) 4–5 ("Last week we received a response to a settlement proposal submitted to the United States and the Tribe. Their response came in early last week. We're in the process of coordinating amongst the parties to see if we can resolve the remaining differences."); Tr. (Oct. 25, 2016) 11–12 ("There was a meeting last week between the federal entities and the private water entities to discuss the issue. My understanding is that they made

Further, although counsel for the Tribes did not appear at these status conferences in person, since the Tribes were not parties at that time, the Tribes' counsel did call in to the conferences by telephone to keep abreast of the subcase.⁷¹ The Tribes also participated fully in the settlement mediation presided over by Judge Melanson.⁷² And the Tribes immediately intervened in the matter of Milner Irrigation District's petition to change the reset protocol within days of the Director characterizing it as a contested case.⁷³

The State cites this Court's *Basin 63 Challenge Decision*,⁷⁴ for the proposition that issues regarding historical practices in administering water rights must be adjudicated at the time the water rights are adjudicated,⁷⁵ but that case did not involve a motion to amend the judgment. Further, *Basin 63 Challenge* cited *Rangen, Inc. v. IDWR*⁷⁶ in support of the proposition for which it is cited. In *Rangen*, Appellant Rangen, Inc., initiated a contested case by filing a petition for a delivery call before the Director alleging that junior ground water pumping in the Eastern Snake

some progress and had productive discussions and the – I'm sorry, the Tribes were involved in the meeting as well, and the U.S. and the Tribes are going to have some additional discussion and then get back in touch with the water users."); Tr. (Dec. 20, 2016) 34 ("Since the last status conference, a number of the spaceholders have had continued discussions with the United States and the Tribes regarding this, what we call the reset issue, and attempting to resolve proposed language that we would then submit to the Court in probably what would be a general provision. We continue to have those discussions with the United States and the Tribes.").

⁷¹ Second Goodman Dec., ¶ 6.

⁷² *Id.* ¶ 7.

⁷³ *Id.* ¶ 8.

⁷⁴ Ex. 27 to Orr Declaration of Michael C. Orr in Support of State of Idaho's Consolidated Response to Joint Motion, excerpted pages of the *Memorandum Decision and Order on Challenge and Order of Recommitment to Special Master, Subcase Nos 63-33732 (consolidated subcases no. 630-33737), 63-33733 (consolidated subcase no. 63-33738), and 63-33734* (September 1, 2016).

⁷⁵ State's Resp. at 51.

⁷⁶ 159 Idaho 798, 798, 367 P.3d 193, 201 (Idaho, 2016).

Plains Aquifer was materially injuring its water rights. The court rejected Rangen's arguments because they were contradicted by the language of Rangen's partial decrees by the SRBA. "Any interpretation of Rangen's partial decrees that is inconsistent with their plain language would necessarily impact the certainty and finality of SRBA judgments and, therefore, requests for such interpretations needed to be made in the SRBA itself."⁷⁷ Neither *Rangen* nor its progeny provide an argument against amending a decree, especially where, as here, every placeholder supports the amendment. Similarly, the *Basin 65 Challenge Decision* cited by the State⁷⁸ involved late claims, and not a joint motion to amend a judgment.

The State next notes that because the FHA does not explicitly address reset, or expressly preserve past practice regarding reset, the reset is to be administered by the Director at his discretion. The State points to various provisions of the FHA concerning administration to argue that the Tribes could have negotiated for a similar provision regarding reset.⁷⁹ The cited provisions, were, as is obvious, necessary to resolve disputes existing or known at the time. There was no such dispute known or existing at the time regarding the accounting and reset process. That existing accounting and reset process was, to use the State's phrase, a "fact of life,"⁸⁰ akin to application of the system of prior appropriation itself (which, we note, is the system used to administer each of the rights set out in the FHA without the FHA anywhere using

⁷⁷ 159 Idaho at 798, 367 P.3d 193, 201.

⁷⁸ Ex. 28 to Orr Declaration of Michael C. Orr in Support of State of Idaho's Consolidated Response to Joint Motion, excerpted pages of the *Memorandum Decision and Order on Challenges; Final Order Disallowing Water Right Claims, Subcase Nos. 65-23531 and 63-23532* (October 7, 2016).

⁷⁹ State's Resp. at 51-55.

⁸⁰ State's Resp. at 54.

the term “prior appropriation”). Moreover, as the Tribes have argued in the Reset Contested Case itself, the FHA does by its own terms require a reset date no later than October 1.⁸¹

Further, in making this argument, the State does not contest the basic facts laid out by the Tribes concerning the past administration of the reset by the Director. The State does not explain why the parties to the FHA should have anticipated this later change (when there was no dispute over this issue at that time) and negotiated to prevent it back in 1990. Nor does the State contest that moving the reset date to January 1 was prejudicial to the Tribes’ interests in their federal contract storage rights. For the reasons stated previously, moving the reset to January 1 was a change so far removed from past practice that it is not “simply a fact of life,”⁸² but actually substantially changed the water rights of the Tribes. The change is such that if this Court does not grant the motion and amend the judgment, there is no other remedy available to the Tribes, save for a takings claim.⁸³

In order to grant the joint motion, the Court need not decide the merits of the Tribes’ underlying reset or takings claims. That the Tribes assert a strong claim is sufficient to establish unique circumstances supporting the motion to amend where all placeholders support the motion.

⁸¹ See Shoshone Bannock Tribes’ Brief on “Threshold Issue” in the Contested Case (January 19, 2018) at 14, n.5, Ex. A to Second Goodman Dec. (explaining how incorporation of the Michaud Contract into the FHA defines reset requirements).

⁸² State’s Response at 54.

⁸³ See *supra* at 22–23.

D. The Status of the Tribes and the United States as Sovereigns and their Willingness to Collaborate Presents a Unique and Compelling Circumstance

The State's argument that the sovereignty of the Tribes and the United States is not relevant to the unique and compelling circumstances standard⁸⁴ misses the mark. The Tribes are not arguing that different legal standards apply to the administration of the water rights of the Tribes or the United States. Rather, the Tribes are noting the unique factors governing the rights at issue here, and the resolution of the dispute. The FHA itself notes the critical and unique importance of the fact that it involved not just the concurrence but the ongoing cooperation of three sovereign entities.⁸⁵

As noted in the Tribes' Brief and discussed further above, a critical component of the proposed settlement—the agreement of the USBR to a 2,500 cfs flow cap on its Lake Walcott right for thirty days—cannot be accomplished administratively because it requires a reduction to the USBR's water right. The State cites *Board of Directors of Wilder Irrigation Dist. v. Jorgensen*,⁸⁶ for the proposition that the USBR holds water rights in its proprietary capacity,⁸⁷ but the cited passage is merely dictum from a concurring opinion, and in any event is inapposite to the Tribes' argument here.

⁸⁴ State's Resp. at 57–59.

⁸⁵ See FHA § 8.1 (the parties “recognize and respect the sovereignty” of each of the three sovereigns, agree to “strike a balance among these sovereign interests” and “agree to cooperate in the administration of water resources”); Art. 9 (setting out an Intergovernmental Board and process for resolving disputes among the three sovereigns), Ex. A to First Goodman Dec.

⁸⁶ 64 Idaho 538, 136 P.2d 461, 467 (1943) (Ailshie, J., concurring).

⁸⁷ State's Resp. at 58.

Further, the FHA expresses “[t]he policy of the Congress and the federal Executive Branch ... to facilitate negotiations among Indian tribes, states, private water users and federal agencies to avoid litigation.”⁸⁸ The FHA also notes that “[t]he Tribes have a long-standing tradition of favoring negotiation as a means of resolving conflicts.”⁸⁹ As the Tribes previously noted, the Western States Water Council, a water policy body affiliated with the Western Governors’ Association, and the Native American Rights Fund have issued a joint statement supporting settling rather than litigating tribal water rights claims.⁹⁰ The FHA and its ratification by Congress and the State is testimony to the value of negotiation and compromise rather than litigation.

The State’s assertion that “the Tribes’ real objective is to re-litigate or revisit their original ‘water right claims,’”⁹¹ is completely off-base, and is belied by the procedural posture of this case. The Tribes are parties to a joint motion to incorporate a stipulated settlement into the partial decrees. The Tribes did not file any action nor can the State point to any such attempt to “re-litigate” its original claims. The Stipulated Settlement is unopposed by any water user and is specifically intended to *avoid* further litigation. And further litigation over this point *will be avoided* if the Court grants the Joint Motion. Only if this settlement is rejected and the Joint Motion is denied based will there be a high likelihood of further litigation.

⁸⁸ FHA § 3.4, Ex. A to First Goodman Dec.

⁸⁹ *Id.*, § 3.3.

⁹⁰ Tribes’ Br. at 22–23.

⁹¹ State’s Resp. at 57–58.

E. The Motion is Made Within a Reasonable Time

For the reasons stated in the Tribes' Brief and the SWC Brief, the time for purposes of this motion began not with the filing of the partial decrees, but with the Director's order to the Watermaster to change the reset date to January 1. Even assuming the filing of the partial decrees is the appropriate start date, however, the movants have still filed within a reasonable time under the circumstances. The Tribes diligently engaged with IDWR and other parties once the proposed change in reset date was brought to its attention.⁹² No placeholder has been prejudiced by the failure to file this motion sooner, nor has the State been prejudiced, and in fact all placeholders support the motion. In the *Basin 63* subcases, this Court in 2019 granted the motion to amend partial decrees that had been entered into over ten years previously.⁹³

The State argues that the failure to file post-judgment motions after mediation failed and by a deadline set by the Court (May 16, 2017) in the "*Basin 1 Stipulation*" subcases means that this motion is out of time. But the Court's orders in those subcases were merely procedural orders relating to those subcases, and not a determination on the reasonable time for bringing a motion to amend the partial decrees. As the Court is aware, although the mediation failed, the parties continued negotiating and reached the settlement which they propose to have adopted by

⁹² See Second Goodman Dec., ¶ 8.

⁹³ Ex. 29 to Declaration of Michael C. Orr in Support of State of Idaho's Consolidated Response to Joint Motion, excerpted pages of *Order Granting Motion to Alter or Amend Partial Decrees (Subcase Nos. 63-303, 63-3613, 63-3614, and 63-3618)* (July 19, 2019). The *Basin 63* Order incorporated the background statement from an earlier order relating to the same water rights. *Id.* at 1, n.1. That order stated that the partial decrees for water rights had been issued in 2007, 2008, and 2009. See *Order Denying Motions to Participate at 3 (Subcase Nos. 63-33732, 63-33733, 63-33733, 63-33734, 63-33734A, 63-33734B, 63-33737 and 63-33738)* (July 8, 2019), Ex. C to Second Goodman Dec.

amending the decrees. Further, as the State acknowledges⁹⁴, when the Court dismissed the Surface Water Coalition's motion for a reset general provision after mediation on the reset issue failed the Court did so without prejudice, stating that if the Coalition wished to refile the motion then it would have to reopen the subcases consistent with the Idaho Rules of Civil Procedure.⁹⁵ And that is exactly what Surface Water Coalition, along with all other parties, have done by submitting the Joint Motion.

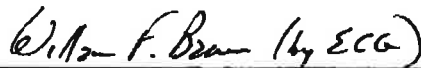
CONCLUSION

For the reasons set out herein, as well as in the Tribes' Brief, the SWC Brief, the SWC Reply, and United States' Reply, the Tribes respectfully request that this Court grant the Joint Motion.

DATED this 16th day of January, 2020.



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⁹⁴ State's Resp. at 17.

⁹⁵ Ex. 18 to Declaration of Michael C. Orr in Support of State of Idaho's Consolidated Response to Joint Motion, Order *Sua Sponte Dismissing Motion Without Prejudice* 6-7 (May 18, 2017).

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 2020, I served a true and correct copy of the foregoing Tribes' Reply to State of Idaho's Consolidated Response to Joint Motion to Modify Partial Decrees for Purpose of Adding Diversion Rate and "Reset" Administrative Remarks on the persons listed below by email, if available, or U.S. Mail:

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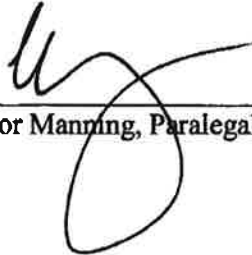
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ATTACHMENT A

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