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WATER RESOURCES
WESTERN REGION

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 63-34614 IN THE NAME OF
MICRON TECHNOLOGY, INC.

**SUEZ'S MOTION FOR PARTIAL
SUMMARY JUDGMENT CONCERNING
CONDITION 908**

SUEZ Water Idaho Inc. ("SUEZ"), by and through its counsel of record, Givens Pursley LLP, and pursuant Rules 260 and 565 of the Idaho Department of Water Resources' Rules of Procedure (IDAPA 37.01.01.260 and .565), and Rule 56 of the Idaho Rules of Civil Procedure, hereby moves the Hearing Officer to issue an order determining as a matter of law the following:

(1) The condition known as "Condition 908" is contrary to Idaho law and to the terms of the Refill Settlement, and no longer will be imposed on new water right permits or licenses sourced from the Boise River.

(2) In lieu of Condition 908, other conditions should be imposed on new Boise River permits and licenses to recognize and implement the Refill Settlement.

This motion is made and based on the pleadings and documents currently filed and lodged in the above-captioned matter, and *SUEZ's Memorandum in Support of Motion for Partial Summary Judgment* filed contemporaneously herewith.

SUEZ does not request oral argument or a hearing on this motion.

Respectfully submitted this 2nd day of July, 2020.

GIVENS PURSLEY LLP

By


Christopher H. Meyer

By


Michael P. Lawrence

Attorneys for Protestant SUEZ Water Idaho Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June 2020, the foregoing, together with any appendices or exhibits, was filed, served, and copied as shown below.

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WATER RESOURCES
WESTERN REGION

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 63-34614 IN THE NAME OF
MICRON TECHNOLOGY, INC.

**DECLARATION OF MICHAEL P.
LAWRENCE IN SUPPORT OF SUEZ'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT CONCERNING CONDITION
908**

I, MICHAEL P. LAWRENCE, declare:

1. I am an attorney licensed to practice in the State of Idaho and am in good standing with the Idaho State Bar. I am an attorney of record for Protestant SUEZ Water Idaho Inc. ("SUEZ") in the above captioned proceeding. The following facts are personally known to me, and if called as a witness, I would and could truthfully testify thereto. I make this declaration under Idaho Code Section 9-1406.

2. On July 2, 2020, together with my law partner Christopher H. Meyer, I caused to be filed and served *SUEZ's Motion for Partial Summary Judgment Concerning Condition 908* and *SUEZ's Memorandum in Support of its Motion for Partial Summary Judgment Concerning*

**DECLARATION OF MICHAEL P. LAWRENCE IN SUPPORT OF SUEZ'S MOTION FOR PARTIAL SUMMARY
JUDGMENT CONCERNING CONDITION 908 (7/2/2020)**

Condition 908 (“SUEZ’s Memorandum”). True and correct copies of the following documents are attached to the *SUEZ’s Memorandum* as Appendices:

- APPENDIX A—Memorandum from Nick Miller to Sean Vincent and Angie Grimm regarding “Request for IDWR Staff Memorandum – Boise River Operations” (Sept. 4, 2019) (referred to in *SUEZ’s Memorandum* as the “Memo Request”);
- APPENDIX B—Memorandum from Angie Grimm and Matt Anders to Nick Miller regarding “Origins of Water Right Condition 907 and Implementation of Water Rights with Conditions 907 and 908 in the Boise River Water Right Accounting System” (Jan. 31, 2020) (referred to in *SUEZ’s Memorandum* as the “Staff Memo”);
- APPENDIX C—Memorandum from Matt Anders to Mat Weaver regarding “Implementation of the Refill Stipulated Agreement in the Boise Water Right Accounting,” including a cover letter from Matt Anders to Water District 63 Water User (Feb. 27, 2020) (referred to in *SUEZ’s Memorandum* as the “Anders Memo”);
- APPENDIX D—Letter from Christopher H. Meyer and Michael P. Lawrence to Matt Anders regarding “SUEZ Water Idaho Inc’s comments regarding proposed accounting system updates to implement Refill settlement (Mar. 23, 2020) (referred to in *SUEZ’s Memorandum* as the “SUEZ’s Comments”);
- APPENDIX E—Partial Decree for Water Right No. 63-33734A (July 19, 2019) (referred to in *SUEZ’s Memorandum* as “Refill 1”);
- APPENDIX F—Partial Decree for Water Right No. 63-33734B (July 19, 2019) (referred to in *SUEZ’s Memorandum* as “Refill 2”);and
- APPENDIX G—Stipulation attached as Exhibit 1 to the State of Idaho’s Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and 63-3618, *In re SRBA Case No. 39576* (5th Dist. Idaho Feb. 19, 2019) (referred to in *SUEZ’s Memorandum* as the “Stipulation” and “Refill Settlement Stipulation”).

3. For the convenience of the reader, the documents listed above were attached as Appendices to *SUEZ’s Memorandum* rather than as exhibits to a separate affidavit or declaration.

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

Executed this 2nd day of July, 2020, at Boise, Idaho.



Michael P. Lawrence

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I HEREBY CERTIFY that on this 2nd day of July, 2020, the foregoing, together with any appendices or exhibits, was filed, served, and copied as shown below.

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BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 63-34614 IN THE NAME OF
MICRON TECHNOLOGY, INC.

**SUEZ's MEMORANDUM IN SUPPORT
OF ITS MOTION FOR PARTIAL
SUMMARY JUDGMENT CONCERNING
CONDITION 908**

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INTRODUCTION AND SUMMARY

SUEZ Water Idaho Inc. (“SUEZ”), by and through its counsel of record, Givens Pursley LLP, and pursuant Rules 260, 564, and 565 of the Idaho Department of Water Resources’ Rules of Procedure (IDAPA 37.01.01.260, .564 and .565) and Rule 56 of the Idaho Rules of Civil Procedure, hereby submits this memorandum in support of *SUEZ’s Motion for Partial Summary Judgment Concerning Condition 908* filed contemporaneously herewith.

SUEZ moves the Hearing Officer to issue an order determining the following:¹

¹ The “Refill Settlement” consists of the *Refill Settlement Stipulation* (set out as Appendix G on page 88) as implemented by the Refill 1 and Refill 2 water rights (set out as Appendix E and Appendix F at pages 70 and 75). The Refill Settlement resolved the “Refill Litigation,” which consisted of the following:

- **Basin-wide 17:** *In re SRBA Case No. 39576, Basin-Wide Issue 17, Subcase No. 00-91017*, Order Designating Basin-Wide Issue (4th Dist. Idaho Sept. 21, 2012) (Wildman, J.); *In re SRBA Case No. 39576, Basin-Wide Issue 17, Subcase No. 00-91017*, Memorandum Decision (4th Dist. Idaho Mar. 20, 2013) (Wildman, J.); *A&B Irrigation Dist. v. State* (“Basin-Wide 17”), 157 Idaho 385, 336 P.3d 792 (2014) (Burdick, C.J.).
- **Basin 63 Late Claims:** *In re SRBA Case No. 39576, Subcase Nos. 63-33732 (consolidated subcase No. 63-33737), 63-33733 (consolidated subcase No. 63-33738), and 63-33734*, Memorandum Decision and Order on Challenge and Order of Recommitment to Special Master (4th Dist. Idaho Sept. 1, 2016) (Wildman, J.). No appeal was taken.
- **Basin 65 Late Claims:** *In re SRBA Case No. 39576, Subcase Nos. 63-23531 and 65-23532*, Memorandum Decision and Order on Challenges, Final Order Disallowing Water Right Claims (4th Dist. Idaho Oct. 7, 2016) (Wildman, J.); *United States v. Black Canyon Irrigation Dist.*, 163 Idaho 54, 408 P.3d 52 (2017) (Burdick, C.J.); *Black Canyon Irrigation Dist. v. State*, 163 Idaho 144, 408 P.3d 899 (2018) (Burdick, C.J.).
- **Basin 63 Contested case:** *In the Matter of Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 63*, Notice of Contested Case and Formal Proceedings, and Notice of Status Conference (IDWR Oct. 24, 2013) (Spackman, Director); *In the Matter of Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 63*, Order Staying Proceeding (IDWR Dec. 27, 2013) (Spackman, Director); *In the Matter of Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 63*, Order Lifting Stay and Notice of Status Conference (IDWR Sept. 9, 2014) (Spackman, Director); *In the Matter of Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 63*, Amended Final Order (IDWR Oct. 15, 2015) (Spackman, Director); *In the Matter of Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 63*, Order Denying Petitions for Reconsideration (IDWR Nov. 19, 2015) (Spackman, Director); *Ballentyne Ditch Co. v. Boise Project Bd. of Control*, Case Nos. CV-WA-2015-21376 and CV-WA-2015-21391, Memorandum Decision and Order (4th Dist. Idaho Sept. 1, 2016)

(1) The condition known as “Condition 908” is contrary to Idaho law and to the terms of the Refill Settlement, and no longer will be imposed on new water right permits or licenses sourced from the Boise River.

(2) In lieu of Condition 908, other conditions should be imposed on new Boise River permits and licenses to recognize and implement the Refill Settlement.

SUEZ contends that because Condition 908 is contrary to Idaho law and the Refill Settlement, it should not be imposed, even with the consent of the permit applicant or permittee seeking a license. Should the Hearing Officer conclude otherwise, SUEZ requests that the condition be imposed with language stating that it is included at the request of the applicant or permittee and not imposed as a matter of Idaho law.

Summary judgment is appropriate because an evidentiary hearing is not required to resolve the questions presented in SUEZ’s motion. The question is purely legal—its answer depends only on the plain language of Condition 908 and the principles of law dictated by Idaho’s Prior Appropriation Doctrine. There are no genuine disputes of material fact. Accordingly, nothing precludes the Hearing Officer from determining that SUEZ is entitled to the requested relief as a matter of law.

On September 4, 2019, the Western Regional Manager for the Idaho Department of Water Resources (“IDWR” or “Department”) issued a memorandum (“*Memo Request*”) requesting that Department staff produce a memorandum explaining the permit conditions

(Wildman, J.) (affirming Director’s order); *Ballentyne Ditch Co. v. Boise Project Bd. of Control*, Case Nos. CV-WA-2015-21376 and CV-WA-2015-21391, Order Denying Rehearing (4th Dist. Idaho Nov. 14, 2016) (Wildman, J.). Three appeals were filed: Idaho Supreme Court Nos. 44677-2016, 44745-2017, and 44746-2017. These appeals were fully briefed and awaiting oral argument when the Refill Settlement was reached in July of 2018. Following the enactment of H.B. 1 and approval of Refill 1 and Refill 2 by the SRBA Court on 7/19/2019, the appeals were withdrawn.

commonly referred to as Conditions 907 and 908. (A copy of the *Memo Request* is set out in Appendix A at page 25.) The text of Conditions 907 and 908 is set out on page 2 of the *Memo Request*.)

The *Memo Request* was issued in the context of the above-captioned permit application by Micron Technology, Inc. (“Micron”). The *Memo Request* describes Conditions 907 and 908 as standard conditions. *Memo Request* at 1 (“IDWR typically conditions new, unmitigated appropriations of water from the Boise River with Condition 908 to limit diversion to those times the river is on flood control.”).

On October 30, 2019, SUEZ submitted *SUEZ’s Submission Concerning Condition 908* (“*908 Submission*”) explaining SUEZ’s position on Condition 908, which has been the focal point of SUEZ’s protest of Micron’s permit application. On May 4, 2020, SUEZ submitted *SUEZ’s Corrected Submission Concerning Condition 908* (“*Corrected 908 Submission*”) (collectively, “*908 Submissions*”). The differences between the two are explained on pages 4-5 of the *Corrected 908 Submission*.

On January 31, 2020, Angie Grimm and Matt Anders of IDWR issued the requested memo (“*Staff Memo*”). (A copy of the *Staff Memo* is set out in Appendix B at page 27.) The *Staff Memo* did not address the issues raised in SUEZ’s *908 Submission*.²

SUEZ disagrees that Condition 908 has been, or should be, considered “standard” for Boise River appropriations. Condition 908 was developed 16 years ago by SUEZ (then known as United Water Idaho Inc.) and protestants in a contested permit application. (See footnote 7 at

² The arguments in this motion for partial summary judgment are largely the same as the arguments made in SUEZ’s *Corrected 908 Submission*, which is incorporated herein by reference.

page 10.) SUEZ viewed it as a one-off solution to resolve multiple protests in a matter involving time sensitivity. SUEZ has never agreed to the condition again. Indeed, it does not appear that it has ever been imposed by IDWR without the right holder's consent.³

It is one thing for a water right applicant, prior to the Refill Litigation and Settlement, to have agreed to Condition 908 to resolve a protest (as SUEZ did for water right permit no. 63-31409), but it never was appropriate for IDWR to unilaterally impose the condition on all new Boise River water rights. By subjecting the exercise of an Idaho water right to discretionary decisions made by the U.S. Bureau of Reclamation ("Bureau") and U.S. Army Corps of Engineers ("Corps"), Condition 908 effectively gives the federal government control over the administration of Idaho water rights.

More importantly, the circumstances leading to Condition 908 have been changed fundamentally by the settlement of the Refill Litigation. The condition is no longer appropriate, even if agreed to by a permit applicant or permittee seeking a license. The Refill Settlement addressed whatever concerns gave rise to Condition 908, rendering the condition obsolete. Indeed, inclusion of Condition 908 in new water permits is not just unnecessary, it would be inconsistent with the terms of the Refill Settlement.

In a nutshell, the settlement terms authorize refill of federal reservoirs with water in excess of the quantity of the original storage rights authorizing the first fill of the reservoirs. The original, first-fill storage rights are referred to as the "Base Rights." Under the Refill Settlement, the conditions and extent of refill beyond the first fill are governed by two carefully crafted

³ IDWR imposed the condition on a permit issued in 2019 and on two other licenses, but has not included it as a standard condition on all new Boise River appropriations. (See footnotes 8 and 9 at page 11.)

storage rights decreed to the Bureau by the SRBA Court. They are commonly referred to as Refill 1 (no. 63-33734A) and Refill 2 (no. 63-33734B). For convenience, copies of the partial decrees for these rights are attached hereto as Appendix E and Appendix F (at pages 70 and 75, respectively).

Condition 908 has the effect of prohibiting diversions when a water right would otherwise be in priority unless the federal government decides to release water from Lucky Peak dam for flood control (when the Boise River is “on flood release” in the condition’s language).⁴ Concerns about federal control over the administration of water rights on the Boise River were front and center in the Refill Litigation. Those concerns were resolved in the Refill Settlement which, among other things, gave the Bureau an entitlement to refill under priority up to the quantity specified in Refill 2. Refill 2 is subordinated to water rights existing as of the date of the Refill settlement, but not to newly issued water rights. Accordingly, the Bureau’s right to refill under priority is fully protected (to the extent of the quantity in Refill 2) as against new permits (including the one sought here by Micron). Refill in excess of the quantity in Refill 2 is allowed under Refill 1, but (with limited exceptions known as “carve-outs”) only under free river conditions (*i.e.*, not under right of priority).⁵

Thus, Condition 908 is unnecessary to allow priority refill under Refill 2 or non-priority refill under Refill 1. The only conceivable purpose of attaching Condition 908 to a new permit

⁴ What “on flood release” means is subject to debate. See sections I and VII, below. Under any interpretation, decisions of the federal government set the boundaries of the time period.

⁵ Micron’s application no. 63-34614 proposes diversions of Boise River water for ground water recharge and industrial uses. Ground water recharge is one of the “carve outs” to Refill 1’s subordination, meaning that Refill 1 would not be subordinated to Micron’s proposed ground water recharge use. On the other hand, Refill 1 would be subordinated to Micron’s industrial use because that use is not one of the “carve outs” to subordination.

or license would be to prevent its exercise when it would otherwise be in priority (*i.e.*, when the Bureau has satisfied both its initial priority fill under its Base Rights and its second priority fill under Refill 2). If Micron's right is subjected to Condition 908, diversions by Micron that would otherwise have been in-priority would be curtailed if the river is not "on flood release." This, in turn would allow the Bureau to store under Refill 1 water that would otherwise have been delivered to Micron. Thus, the practical effect and sole purpose of adding Condition 908 is to give the Bureau the ability to refill more than it is entitled to under Refill 2. In essence, Condition 908 gives the Bureau unlimited in-priority refill vis-à-vis a holder of the right with Condition 908.

The Department should not agree to this circumvention of the Refill Settlement and enlargement of Refill 2, even if the applicant does not oppose the condition. The State fought hard in the Refill Litigation to avoid unlimited priority refill by the Bureau—which effectively equates to federal preemption of State control over the administration of water rights. The Refill Settlement upheld the Department's paper-fill accounting methodology and placed clear sideboards on the right to refill following paper fill of the Base Rights. The Department should not abolish those sideboards by imposing the obsolete Condition 908 on new rights.

In any event, if the condition is nonetheless included on a permit or license, the Department must make clear that its imposition is based on the applicant's request for the condition (to resolve a protest), and not as a standard condition compelled by Idaho law.

LEGAL STANDARD

Because there are no genuine issues of material fact, SUEZ's motion can be decided as a matter of law and without an evidentiary hearing. The language of Condition 908 and Idaho's Prior Appropriation Doctrine control the outcome.

Summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). "A material fact is one upon which the outcome of the case may be different." *Rife v. Long*, 127 Idaho 841, 849, 908 P.2d 143, 151 (1995). A "genuine" dispute of material fact exists if the evidence is such that a reasonable tribunal could return a decision for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The Idaho Supreme Court has stated: "The non-moving party must respond to the summary judgment motion with specific facts showing there is a genuine issue for trial." *Stafford v. Weaver*, 136 Idaho 223, 225, 31 P.3d 245, 247 (2001). To that end, neither a mere scintilla of evidence, slight doubt, or conclusory assertion is sufficient to create a genuine issue of material fact. *Mendenhall v. Aldous*, 146 Idaho 434, 196 P.3d 352, 354 (2008). Rather, the non-moving party must "go beyond the pleadings and by [its] own affidavits, or by depositions, answers to interrogatories and admissions on file, designate specific facts showing there is a genuine issue for trial." *Celotex Corp.*, 477 U.S. 317, 323-24. In a motion for summary judgment, the non-moving party's case "must be anchored in something more than speculation, and a mere scintilla of evidence is not enough to create a genuine issue of fact." *Pena v. Minidoka Cty.*, 133 Idaho 222, 225, 984 P.2d 710, 713 (1999).

Here, the Hearing Officer is entitled to arrive at the most probable inferences based upon the undisputed evidence and may grant summary judgment despite the possibility of conflicting inferences. *J.R. Simplot Company v. Bosen*, 144 Idaho 611, 615, 167 P.3d 748, 752 (2006).⁶ On appeal, the tribunal's ruling on summary judgment will not be disturbed as long as the inferences drawn are reasonably supported by the record. *Id.*

DISCUSSION

I. CONDITION 908 HAS NOT BEEN APPLIED TO ALL NEW BOISE RIVER APPROPRIATIONS.

What is now referred to as Condition 908 was first included in SUEZ's water permit no. 63-31409, issued on March 19, 2004, pursuant to a settlement to resolve protests by the Bureau and three irrigation entities (the Boise Project Board of Control, Pioneer Irrigation District, and Settlers Irrigation District).⁷ The negotiated condition was developed from scratch by the parties during settlement negotiations, and IDWR deemed it acceptable to include on the water right permit. As far as SUEZ is aware, this condition has been included on only one Boise River

⁶ Generally, when a court or other tribunal assesses a motion for summary judgment, all controverted facts are to be liberally construed in favor of the nonmoving party. *See G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991); *Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987). Likewise, all reasonable inferences which can be drawn from the record generally must be drawn in the nonmovant's favor. *G & M Farms*, 119 Idaho at 517, 808 P.2d at 854; *Clarke v. Prenger*, 114 Idaho 766, 760 P.2d 1182 (1988); *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 876 P.2d 154 (Ct.App. 1994). However, where a case will not be decided by a jury, the court—or in this case, the Hearing Officer—is entitled to draw the most probable inferences. *J.R. Simplot*, 144 Idaho at 615, 167 P.3d at 752.

⁷ SUEZ's permit no. 63-31409 has a priority date of 11/16/2001 for 20 cfs. All protests were withdrawn pursuant to a second settlement stipulation filed on 12/16/2003. *In the Matter of Application for Permit No. 63-31409*, Second Stipulation for Withdrawal of Protests (IDWR Dec. 16, 2003). The permit was issued on 3/19/2004. Pursuant to the 2003 settlement, the permit includes, as condition no. 16, the language that has come to be known as Condition 908. (The Department's database entry for no. 63-31409 does not identify the condition under code "908" (or any other code) presumably because this was the first time the condition had been included on any water right.)

No. 63-31409 is the second of two Boise River surface water permits held by SUEZ. The first, no. 63-12055, was permitted on 3/10/1995 with a priority date of 9/8/1993 for 24.8 cfs. It contains no condition similar to Condition 908 restricting when diversions may occur.

permit issued since no. 63-31409.⁸ In addition, IDWR has included it on two licenses where IDWR found evidence to support a conclusion that the applicants had expected to be able to divert water only during flood control operations.⁹

In other words, the only times IDWR has imposed Condition 908 are: (1) in a permit where SUEZ agreed to it for purposes of settling protests, (2) during licensing of Simplot and Micron rights where IDWR found express statements by the applicants demonstrating that they expected to be able to divert water only during flood control operations, and (3) where Elmore County acquiesced to inclusion of the condition in its recently issued permit. These circumstances do not support characterizing it as a “standard” condition that should be included on all new Boise River water rights.

II. CONDITION 908 IS AMBIGUOUS AND DIFFICULT TO ADMINISTER.

Condition 908 is the result of a negotiated settlement. As sometimes happens in resolutions of disagreement, the settlement language is obscure and its meaning is subject to debate. It is SUEZ’s understanding that the Department has never actually administered

⁸ In 2019, IDWR imposed Condition 908 on Elmore County’s permit no. 63-34348 evidently because the applicant stated on the record that it would accept the condition.

⁹ IDWR included the condition on license nos. 63-12399 (Simplot) and 63-12420 (Micron). The condition was not included in these rights’ original permits, which were issued in 1999 (*i.e.*, before SUEZ’s permit no. 63-31409). Documents in IDWR’s files show that the condition was added to the licenses because IDWR found evidence to support a conclusion that the applicants had expected to be able to divert water only during flood control operations. The right holders apparently did not challenge the addition of this condition after the licenses were issued. *See Memorandum from Shelley W. Keen to Water Right File 63-12399 Re. Use of Approval Condition 908* (Apr. 9, 2015); *Memorandum from Shelley W. Keen to Water Right File 63-12420 Re. Use of Approval Condition 908* (Apr. 9, 2015) (collectively, “*Keen Memoranda*”). According to the *Keen Memoranda*, in 2013 IDWR “instructed staff to issue permits for new appropriations of surface water and ground water upstream from Star with the [908 Condition].”

Condition 908. This is not surprising, given that its meaning is not clear.¹⁰

The Department recently proposed updates to its water rights accounting program to implement the Refill Settlement, including a mechanism for administering Condition 908.¹¹

However, neither the *Anders Memo* nor the earlier *Staff Memo* provide any explanation as to when Condition 908 will be administered (*i.e.*, when the river is “on flood control”).¹²

¹⁰ In response to a discovery request during the Refill Litigation, the Director of the Department stated:

The Department is not aware of a standard or accepted definition of what constitutes a flood control release from the federal on-stream reservoirs on the Boise River. Flood control operations at these reservoirs are governed by federal statutes, regulations, manuals, and contracts as interpreted and applied by federal agencies (the Corps of Engineers and the Bureau of Reclamation), and these agencies have not provided the Department with clear or consistent definitions or standards for determining when water has been or is being released for flood control purposes.

In the Matter of Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 63, Response to Boise Project Board of Control’s Document Request and Requests for Disclosure at 5 (Jan. 9, 2015).

¹¹ On February 27, 2020, IDWR Hydrology Section Supervisor Matt Anders issued a memorandum to Mat Weaver, IDWR’s Deputy Director regarding “Implementation of the Refill Stipulated Agreement in the Boise Water Right Accounting” (“*Anders Memo*”). A copy of the *Anders Memo* is set out in Appendix C at page 34. Pursuant to paragraph 18 of the Refill Settlement’s stipulation, Water District 63 water users were provided notice of the memorandum and an opportunity to comment. SUEZ provided comments to the Department on March 23, 2020 (“*SUEZ’s Comments*”), a copy of which is set out in Appendix D at page 57. *SUEZ’s Comments* requested further explanation and information concerning how the accounting system updates implement Condition 908. To date, no further explanation or information has been provided, and SUEZ is unaware whether the proposed updates have actually been implemented.

¹² The *Anders Memo* notes that the accounting program will contain a “flag” for Condition 908, but says nothing about how rights with that flag actually will be administered. The one thing that is clear is that Condition 908 poses a further limitation on when the right may be exercised. The following is the full extent of the discussion of Condition 908 in the *Anders Memo*:

Some water rights have a condition requiring watermaster authorization to divert flood control releases. IDWR developed a process for the watermaster to authorize these water rights to fulfill this stipulation. This process included adding a new artificial diversion with the number “15201501” to the IDWR Watermaster Data Entry Software [internet link omitted]. The Watermaster will enter a “1” in diversion “15201501” for each day of the year that flood control releases are occurring and these water rights are authorized, and a “0” for each day of the year that flood control releases are not occurring. IDWR selected this method because it creates a historical record of the number of days that water rights with flood control diversion conditions that require authorization by the Watermaster diverted water that can be viewed by the public in near-real-time.

In fulfillment of [the Refill Settlement’s] stipulation [no. 18], IDWR has developed a method to “flag” water rights in the water right list that have

Some have contended that the condition authorizes unlimited refill of federal reservoirs under the Base Rights' priority.¹³ SUEZ's position is that the reference to "on flood release below Lucky Peak dam/outlet" means the time of year during which the Bureau and the Corps actively manage the reservoir system for flood control. This runs from January 1 of each year and continues either through July 31 or the day of allocation (the date of maximum fill), whichever is earlier.¹⁴ Prior to January 1, the Corps' *Water Control Manual for Boise River Reservoirs* (April 1985) ("*Water Control Manual*") allows the Boise River reservoirs to be filled so long as certain volumes of space remain empty. *Water Control Manual* at 7-4. Beginning on January 1 and continuing until July 31 or the day of allocation (whichever is earlier), the

conditions related to flood control releases. The RTS [which is the master water rights list] contains multiple fields (see Attachment G) describing different elements of a water right. The "Variable Right Field" is used to "flag" water rights for special calculations in water right accounting. IDWR has added administered water rights with conditions related to flood control releases to the water right list and it has populated the "Variable Right Field" with a number between 900 and 908 to indicate the specific type of flood control condition(s) on the water right.

IDWR added new code to the water right accounting program to implement the specific flood control condition(s) on water rights to fulfill this stipulation (see Attachment C). Programming code was added to the accrual routine that determines if a water right has a value between 900 and 908 in the "Variable Right Field." If the programming code detects a value between 900 and 908, it determines if the specific condition(s) on the water right related to flood control releases have been met. If the condition(s) have been met, the accrual routine accrues natural flow to the water right up to its diversion rate. If not, the water right diversion rate is set to zero cfs for that accounting day."

Anders Memo at 6.

¹³ See, e.g., Appellants' Opening Brief in *Ballentyne Ditch Co. v. IDWR*, No. 44677-2016, Idaho Supreme Court (May 26, 2017), page 60, 2017 WL 2495277 at *60 ("The above-quoted flood control use water right remarks employed by the Department [Condition 908] constitute express acknowledgment and concession that BOR's existing storage rights authorize 'refill'").

¹⁴ The "day of allocation" is a term of art used by IDWR that corresponds to the date when there is not enough natural flow to satisfy all water rights that are in priority and hence no excess water that can be stored in reservoirs whose rights already have been satisfied once. Essentially, this is the date that IDWR determines that the reservoirs are as full as they are going to get, and it is time to allocate the stored water to the holders of storage contracts.

reservoirs are actively managed to balance flood control and reservoir fill based on runoff forecasts and inflow projections and “rule curves” contained in the *Water Control Manual*. *Water Control Manual* at 7-6, 7-11.¹⁵

In other words, “on flood release” does not necessarily mean that water is being vacated for flood control. Rather, it means that Lucky Peak is under flood control management by the Bureau and the Corps. Thus, as SUEZ understands the condition to which it agreed, a right subject to Condition 908 may be exercised freely (under its priority) from January 1 through July 31 or the day of allocation, whichever is earlier. And it may not be exercised (even if in priority) during the rest of the year.

Suffice it to say, Condition 908 is not a model of clarity. And its administration could be subject to challenge. The convoluted language employed in this one-time settlement of a contested permit hardly seems a good model for a “standard” condition. Indeed, difficulty and uncertainty in administration suggest that it should no longer be included on any new permits, even if requested by the applicant.

III. CONDITION 908 IS CONTRARY TO IDAHO LAW, WHICH RECOGNIZES THE RIGHT TO APPROPRIATE PUBLIC WATERS FOR BENEFICIAL USE.

Another reason that Condition 908 should not be considered a “standard” condition (*i.e.*, a condition imposed on all new Boise River appropriations) is that it is not consistent with Idaho’s recognition under the Prior Appropriation Doctrine that all of the state’s natural flowing waters are available for appropriation to beneficial use and shall be administered by the

¹⁵ The *Water Control Manual* describes the periods from January 1 to March 31 as the “spring snowmelt evacuation period” and April 1 to July 31 as the “refill period.” *Water Control Manual* at 7-6, 7-11.

Department in accordance with their priority absent express statutory or constitutional authority to the contrary.¹⁶

In other words, whatever “on flood release” means, it is a restriction on the exercise of a right that otherwise would be in priority. This is contrary to Idaho’s constitutional, doctrinal, and statutory commitment to the priority system as the arbiter of when a right may be exercised.

IV. CONDITION 908 IMPROPERLY DELEGATES CONTROL OF STATE WATER RIGHTS TO THE FEDERAL GOVERNMENT.

In addition, treating Condition 908 as a “standard” condition would impermissibly delegate the state’s unappropriated waters—and the state’s authority to control and regulate such waters—to the federal government by allowing the Bureau and the Corps to determine when water becomes available to an Idaho water right holder.

The Director of IDWR has firmly rejected the premise that the only unappropriated waters in the Boise River are those the federal government decides to release from Lucky Peak for flood control. *In the Matter of Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 63*, Amended Final Order at 48 (IDWR Oct. 15, 2015) (Spackman, Director) (“The existence of unappropriated high flows in flood control years is a product of the snowpack. Flood control operations, in short, are a response to unappropriated

¹⁶ Idaho Const. art. 15, § 3 (“The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied”); Idaho Code § 42-101 (“All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose, and the right to the use of any of the waters of the state for useful or beneficial purposes is recognized and confirmed”); Idaho Code § 42-602 (“The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. . . . The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine.”).

high flows, not the cause of them.”). In the recently-concluded and hard-fought Refill Litigation, IDWR, the State of Idaho, and SUEZ defended this conclusion and the fundamental principles cited in footnote 16 at page 15. Those efforts will be meaningless if Condition 908 is treated as “standard” for all new Boise River appropriations.

If Condition 908 is read to allow diversion only when the federal government elects to release water for flood control (or whatever “on flood release” means), the condition undermines the Director’s determination about proper water right accounting. Essentially, it would give the federal government a right to refill ahead of juniors and to determine when junior rights may be satisfied. This is contrary to Idaho law and, as discussed below, in conflict with the Refill Settlement.

V. CONDITION 908 IS UNNECESSARY AND CONTRARY TO THE TERMS OF THE REFILL SETTLEMENT.

In any event, Condition 908 is rendered obsolete and inappropriate by the Refill Settlement. Under the terms of that agreement—approved at the highest levels of State government—the right of the federal government to refill in excess of the quantities authorized in its Base Rights is guaranteed by (and limited to) the Refill 1 and Refill 2 rights. The limitation on diversion reflected in Condition 908 fails to recognize that, going forward, Refill 1 and Refill 2 reflect the full extent of the Bureau’s right to refill. Adding Condition 908 to new rights undermines that carefully crafted settlement.

SUEZ’s contention that Condition 908 is inconsistent with the Refill Settlement requires an understanding of the Refill Litigation. Accordingly, SUEZ set out in Appendix A to its *908 Submissions* a summary and explanation of this extraordinarily complex dispute spanning nearly a decade. This history is understood by few, and memories already are fading. Likewise, the

Refill 1 and Refill 2 rights implementing that settlement (and the legislation authorizing one of the rights) are opaque and largely unexplained in the record. Because no other concise public documentation of the settlement exists, SUEZ thought it important to provide the detailed summary set out in Appendix A to its *908 Submissions*.¹⁷

The Refill Settlement authorized two new “Late Claim”¹⁸ storage rights (Refill 1 and Refill 2) held by the Bureau for use in the federal on-stream Boise River reservoirs. (A summary of Refill 1 and Refill 2 is set out in Table A below (which is the same as Table A on page 24 in Appendix A to the *Corrected 908 Submission*).

¹⁷ Helpful, but invariably incomplete, summaries of the Refill Litigation are found in some of the decisions set out in footnote 1 at page 3. But there appears to be no publicly available summary and explanation of the Refill Settlement itself.

¹⁸ The terms “Base Rights” and “Late Claims” are explained in footnote 16 on page 19 in Appendix A of the *Corrected 908 Submission*.

Although Refill 1 and Refill 2 were both Late Claims, they were of a different nature. Refill 1 (the free river right) was a “beneficial use” right based on historic practice prior to 1971. In 1971, the permitting process was made mandatory for surface water rights (except for watering stock directly from streams). 1971 Idaho Sess. Laws, ch. 177 (codified at Idaho Code §§ 42-103, 42-201).

Refill 2 is not a “beneficial use” right, which explains why it has a later priority date than Refill 1’s 9/30/1965 priority date. This also explains how Refill 2 could have a 1973 priority date, which is two years after the Legislature ended the ability to establish surface rights by beneficial use. Instead, Refill 2 is a so-called “enlargement” right authorized under Idaho Code § 42-1426. This is an “amnesty” statute that allows an enlarged use of a permitted, licensed, or decreed right (*e.g.*, irrigating more acres than authorized under the paper right) to be recognized as valid in an adjudication so long as the enlarged use occurred prior to the commencement of the adjudication. In 1996, the Idaho Supreme Court declared that this statute cannot operate so as to injure, such as by dilution of priority, any water right existing on the 1994 date the amnesty statute was enacted. *Fremont-Madison Irrigation Dist. v. Idaho Ground Water Appropriators, Inc.* (“Basin-Wide Issue 4”), 129 Idaho 454, 926 P.2d 1301 (1996). Thus, enlargement rights typically are decreed with a condition that subordinates them to water rights with a priority date earlier than April 12, 1994. The Refill 2 right, however, does not include this condition because the settling parties concluded that it was unnecessary given the right’s other subordinations.

Table A: Summary of Settlement Rights		
	Refill 1	Refill 2
Purpose	This “beneficial use right” formally implements the concept of free river refill (<i>i.e.</i> , refill does not occur under priority, except for 3 carve-outs, where refill does occur under priority).	This is a senior “enlargement right” which, due to its subordinations, functionally operates like a junior appropriation for second fill.
May be exercised under priority?	No. Except for the three carve-outs, Refill 1 is subordinated to all water rights (existing and future). Thus, diversion may occur only under “free river” conditions. However, Refill 1 operates under priority as to the three carve-outs.	Yes. Refill 2 may be exercised under priority against post-2014 water rights (as described in the subordination).
Subordination:	Subordinated to all existing and future water rights.	(1) All water rights included on a list attached to Refill 2. This list includes all known surface water rights through 1/30/2014. (2) All surface rights under 1.0 cfs with priority dates prior to 5/1/2014, even if omitted from the above list.
Carve-outs (which eliminate the subordination and allow the right to be exercised under priority):	(1) Surface water storage rights greater than 1,000 AF issued after 4/15/2019 (as described in Idaho Code § 42 115). (2) Managed ground water recharge rights issued after 4/15/2019. (3) All hydropower rights.	None.
Priority date	Due to the subordination, the 9/30/1965 priority date is irrelevant (except for the hydropower carve-out). For purposes of the other two carve-outs, the priority date is functionally converted to a 2019 priority.	Due to the subordination, the 3/16/1973 priority date functionally converts Refill 2 to a 2014 priority. The 3/16/1973 priority date was based on the date of a 1973 statute allowing storage of up to five AF/acre.
Quantity	3,672,732 AF/year. This corresponds to the largest recorded inflow into the reservoirs. In other words, the right is for the entire river flow.	587,056 AF/year. This is the quantity that could be stored under the 1973 statute’s five AF/acre provision beyond the quantity authorized under the Base Rights

Refill 1 confirmed the Bureau’s unlimited right to “free river” refill—that is, the right to refill with virtually no limitation when there is sufficient water in the river to satisfy all other priorities. Refill 1 does not include any priority right to call out other users (with three exceptions known as “carve-outs”). Refill 1 has a priority date of September 30, 1965, but the priority date is rendered meaningless due to its complete subordination to existing and future appropriations (except for the carve-outs). Thus, Refill 1 formalizes the Department’s longstanding administrative practice of allowing free-river refill (*i.e.*, not under right of priority), except for carve-outs that allow some refill under priority.

In contrast, Refill 2 may be exercised under right of priority as to all post-settlement rights (roughly speaking, post-2014 rights). Thus, it allows the reservoirs to “top-off” by curtailing post-settlement rights up to 587,056 AF/year (which is more than half the volume of the federal Boise River reservoirs). By providing a substantial quantity of priority-based refill, Refill 2 renders Condition 908 unnecessary on new water rights.

Indeed, Condition 908 is inconsistent with Refill 2 because it effectively allows refill under priority irrespective of the volume limit in Refill 2 and the subordinations in Refill 1. Condition 908 prevents the right holder from diverting when the river is not “on flood release” even if the Bureau has taken its full second fill under Refill 2. In that circumstance, the Bureau would be able to use its Refill 1 right to store the water that should have gone to the right burdened by Condition 908. In essence, Condition 908 eliminates the subordination in Refill 1 that is designed to protect the conditioned right, thereby converting what was supposed to be a “free river” right into a senior priority right vis-à-vis the conditioned right. This is a plain violation of the Refill Settlement. Its effect is to enlarge the quantity of water that the Bureau may store to the disadvantage of other rights.

Accordingly, SUEZ believes Condition 908 should not be included on new water rights even if a party agrees to it. Doing so circumvents Refill 2’s carefully crafted limitations on the federal government’s ability to dictate the administration of water in the Boise River and exceeds the authorized quantity of priority refill.

SUEZ’s agreement to Condition 908 to resolve a protest in 2003 predated the Refill Litigation. It was viewed by SUEZ as a practical, one-off concession necessary to meet the timeline for SUEZ’s Columbia Treatment Plant. SUEZ understands that other applicants also

might be willing to agree to it for their own reasons. However, now that the Refill Settlement is in place, permit applicants should not be allowed, for purposes of expediency in resolving protests, to chip away at the limitations imposed on the Bureau by Refill 1 and Refill 2. SUEZ strongly urges the Department to recognize that, in light of the Refill Settlement, Condition 908 is no longer efficacious. IDWR should reject the use of Condition 908.

At a bare minimum, if the condition is imposed because an applicant agrees to it, the Department must make clear that its imposition is based on the applicant's request, and not to fulfil a requirement of Idaho law and not as a standard condition or one that may be viewed as an administrative precedent.

VI. IDWR SHOULD ADOPT NEW CONDITIONS TO REPLACE CONDITION 908 AND IMPLEMENT THE REFILL SETTLEMENT.

The Bureau's right to refill pursuant to the Refill Settlement is fully protected by Refill 1 and Refill 2. Accordingly there is no need to place any condition in new water rights. On the other hand, as observed above, Refill 1 and Refill 2 are not easy to understand. Accordingly, SUEZ has no objection to, and would welcome, a simple statement, in the form of conditions, putting water users and others on notice of the effect of Refill 1 and Refill 2 on their rights. Indeed, doing so could be far simpler than a recitation of those rights (as summarized on Table A above), because much of their complexity deals with prior rights—which is immaterial to the new right.

To assist with the administration of new water rights vis-à-vis the Refill 1 and Refill 2 rights, SUEZ proposes the following conditions to be included as standard conditions in new Boise River permits issued by IDWR:

Proposed Condition #1 (Refill 1)

First, SUEZ proposes that IDWR place the following condition on Micron's water right and on all new Boise River surface water rights to make it clear that Refill 1 is not subordinated to the "carved out" uses:

This water right shall be administered as junior to water right number 63-33734A to the extent that it is used for storage of surface water in excess of 1,000 acre-feet per year (as described in Idaho Code § 42-115), for managed groundwater recharge, or for hydropower.¹⁹

Proposed Condition #2 (Refill 2)

Second, SUEZ proposes that IDWR place the following additional condition on Micron's water right and on all new Boise River surface water rights to make it clear that Refill 2 is not subordinated to the new right:

This water right shall be administered as junior to water right number 63-33734B.

These proposed conditions are intended to assist the Department and the general public with understanding the relationship between new permits and licenses and the Refill 1 and Refill 2 rights without requiring complete knowledge of the Refill Settlement. They are intended to neither add nor detract from the Refill Settlement, but rather to simply provide clear notice as to how new permits and licenses are to be administered in relation to Refill 1 and 2.

Finally, SUEZ proposes that the Department place the following condition on all new Boise River surface water rights in order to continue the concept set forth in the last sentence of

¹⁹ Proposed Condition #1 implements Refill 1. Refill 1 is expressly subordinated to all existing and future water rights except for the three "carve-outs." The first of those carve-outs (storage in excess of 1,000 AF/year) required implementing legislation (Idaho Code § 42-115). That is the reason for the reference to the statute.

Condition 908 (which has nothing to do with the Refill Settlement or refill in general, but appears to be good policy):

Proposed Condition #3 (salmon flows)

This water right may not be used to divert water released from storage to augment lower Snake River flows during the migration of Snake River salmon as authorized under Idaho law, or for any purpose of use authorized under the water rights for Lucky Peak Reservoir.

VII. IDWR SHOULD ADDRESS ADMINISTRATION OF EXISTING RIGHTS THAT INCLUDE CONDITION 908.

SUEZ is not advocating that the Department ignore the administration of permits or licenses already containing Condition 908 (such as SUEZ's permit no. 63-31409). As discussed in section II at page 11, the meaning of Condition 908 is uncertain. However, in the stipulation resolving the Refill Litigation, the parties agreed to a provision stating that "the Department will update the Water District 63 water right accounting system to account for the distribution of water pursuant to conditions on water rights authorizing diversions when the Boise River below Lucky Peak Dam is 'on flood release.'" *Stipulation* at 8 ¶ 18 (attached as Exhibit 1 to the State of Idaho's motion, *In re SRBA Case No. 39576*, Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and 63-3618 (5th Dist. Idaho Feb. 19, 2019)). (A copy of the *Stipulation* is set out in Appendix G at page 88.)

Pursuant to this stipulation, the Department has proposed updates to the accounting system. *See Anders Memo*, Appendix C at page 34. SUEZ has requested further explanation and information concerning those updates. *See SUEZ's Comments*, Appendix D at page 57. SUEZ

has not received any further explanation or information, and is unaware whether the proposed updates have actually been implemented.

In any event, as discussed in Section II above, SUEZ recommends that the Boise River be considered “on flood release” from January 1 through July 31 or the day of allocation, whichever is earlier.

CONCLUSION

Condition 908 is contrary to Idaho law and for that reason cannot be unilaterally imposed by IDWR. While water right holders generally are entitled to agree to conditions on their permits or licenses, there is no reason to impose Condition 908 on any new permit or license in light of the Refill Settlement. SUEZ respectfully requests the Hearing Officer issue an order determining that, as a matter of law:

(1) the condition known as “Condition 908” is contrary to Idaho law and no longer will be imposed on new water right permits or licenses sourced from the Boise River or, in the alternative, that the condition will be included on new water right permits or licenses only upon the express consent of the permittee or licensee; and

(2) conditions other than Condition 908 should be imposed on new Boise River permits and licenses to implement the Refill Settlement.

Respectfully submitted this 2nd day of June, 2020.

GIVENS PURSLEY LLP

By


Christopher H. Meyer

By


Michael P. Lawrence

Attorneys for Protestant SUEZ Water Idaho Inc.

Appendix A REQUEST FOR STAFF MEMORANDUM (9/4/2019) ("MEMO REQUEST")

MEMORANDUM

TO: Sean Vincent and Angie Grimm
FROM: Nick Miller 
DATE: September 4, 2019
RE: Request for IDWR Staff Memorandum – Boise River Operations

I would like the Hydrology and Water Rights Sections to jointly prepare a staff memorandum regarding the origins, meaning, and use of Condition 907 as well as some associated discussion of related Condition 908.

The staff memorandum should discuss, 1) Review of the origins of the condition, and some discussion of the development of the last sentence of Condition 907, as that sentence does not appear in the earliest versions of the condition, 2) the basis for the dates and benchmark flows listed in 907, including how or whether they are related to the flood control operations identified in Condition 908, and 3) how Conditions 907 and 908 are implemented in the accounting program, both in previous years and as contemplated for this year's upgrade of the accounting program.

Context of the Request

During a prehearing conference for contested application for permit 63-34614, Michael Orr, representing IDFG, asked that I request a staff memorandum to provide some context on the origins, meaning, and use of Condition 907. The contested application was filed by Micron Technology Inc for industrial and ground water recharge uses from the Boise River. The application was protested by the Boise Project Board of Control, the Idaho Department of Fish and Game (IDFG), the Idaho Foundation of Parks and Land, SUEZ Water Inc, and a group of 14 canal companies and irrigation districts. Because the Boise River is fully appropriated during much of the year, the settlement discussions have involved limiting delivery of water to those times the river is on flood control releases and possibly additional limitations to protect other interests. IDWR typically conditions new, unmitigated, appropriations of water from the Boise River with Condition 908 to limit diversion to those times the river is on flood control. However, IDWR also typically includes Condition 907 that further defines flow parameters that must be met before diversion of the new appropriation is authorized. The purpose and origin of the flow rates and date intervals is not well documented, and it is unclear how or whether this condition is implemented in the water rights accounting.

The two standard conditions are reproduced on the following page, but note that a number of variations do exist, many of which only refer to the 240 cfs limitation.

Standard Conditions 907 and 908

907 If measured or calculated Boise River flows at the point of diversion are less than 240 cfs during the period beginning June 16 and ending February 29, water shall not be diverted pursuant to this right. If measured or calculated Boise River flows at the point of diversion are less than 1,100 cfs during the period beginning March 1 and ending May 31, water shall not be diverted pursuant to this water right. Measured or calculated Boise River flows at the point of diversion shall be based on gauged Lucky Peak Dam discharge minus the gauged diversion of the New York Canal. If the benchmark stream maintenance flows of 240 cfs (from June 16 to February 29) and 1,100 cfs (From March 1 to May 31) subsequently change, then the diversion of Boise River flows under this right will be limited to provide for the new benchmark flows.

908 The right holder shall exercise this right only when authorized by the District 63 watermaster when the Boise River is on flood release below Lucky Peak dam/outlet. Flood releases shall be determined based upon the Memorandum of Agreement between the Department of Army and the Department of Interior for Flood Control Operations of Boise River Reservoirs, dated November 20, 1953, contracts with Reclamation contract holders in the Boise River Reservoirs, the Water Control Manual for Boise River Reservoirs, dated April 1985, and any modifications adopted pursuant to the procedures required in these documents and federal laws. The right holder shall not seek, directly or indirectly, any change to the flood control operations of the 1985 Water Control Manual for Boise River reservoirs. This water right may not be used to divert water released from storage to augment lower Snake River flows during the migration of Snake River salmon as authorized under Idaho law, or for any purpose of use authorized under the water rights for Lucky Peak Reservoir.

**Appendix B MEMORANDUM BY ANGIE GRIMM AND MATT ANDERS ADDRESSING
CONDITIONS 907 AND 908 (1/31/2020) ("STAFF MEMO")**

MEMORANDUM

TO: Nick Miller, IDWR Western Region Manager

CC: Mat Weaver, Deputy Director
Garrick Baxter, Deputy Attorney General
Shelley Keen, Water Allocation Bureau Chief
Sean Vincent, Hydrology Section Manger

FROM: Angie Grimm, Water Rights Section Manager *AG*
Matt Anders, Hydrology Section Supervisor *MA*

DATE: January 31, 2020

RE: Origins of Water Right Condition 907 and Implementation of Water Rights with
Conditions 907 and 908 in the Boise River Water Right Accounting Program

On September 4, 2019, you requested the Water Rights Section and Hydrology Section jointly prepare a memorandum regarding:

- 1) Review of the origins of the condition, and some discussion of the development of the last sentence of Condition 907, as that sentence does not appear in the earliest versions of the condition;
- 2) The basis for the dates and benchmark flows listed in 907, including how or whether they are related to the flood control operations identified in Condition 908; and
- 3) How Conditions 907 and 908 are implemented in the accounting program, both in previous years and as contemplated for this year's upgrade of the accounting program.

This memo serves as our response to your request.

Condition Language

The current language for Condition 907 is as follows:

If measured or calculated Boise River flows at the point of diversion are less than 240 cubic feet per second (cfs) during the period beginning June 16 and ending February 29, water shall not be diverted pursuant to this right. If measured or calculated Boise River flows at the point of diversion are less than 1,100 cfs during the period beginning March 1 and ending May 31, water shall not be diverted pursuant to this water right. Measured or calculated Boise River flows at the point of diversion shall be based on gauged Lucky Peak Dam discharge minus the gauged diversion of the New York Canal. If the benchmark stream maintenance flows of 240 cfs (from June 16 to February 29) and 1,100 cfs (from March 1 to May 31) subsequently change, then the diversion of Boise River flows under this right will be limited to provide for the new benchmark flows.

IDWR Memo Re: Origins of Water Right Condition 907 and Implementation of Water Rights with Conditions 907 and 908 in the Boise River Water Right Accounting Program Page 1 of 7

The current language for Condition 908 is as follows:

The right holder shall exercise this right only when authorized by the District 63 watermaster when the Boise River is on flood release below Lucky Peak dam/outlet. Flood releases shall be determined based upon the Memorandum of Agreement between the Department of Army and the Department of Interior for Flood Control Operations of Boise River Reservoirs, dated November 20, 1953, contracts with Reclamation contract holders in the Boise River Reservoirs, the Water Control Manual for Boise River Reservoirs, dated April 1985, and any modifications adopted pursuant to the procedures required in these documents and federal laws. The right holder shall not seek, directly or indirectly, any change to the flood control operations of the 1985 Water Control Manual for Boise River reservoirs. This water right may not be used to divert water released from storage to augment lower Snake River flows during the migration of Snake River salmon as authorized under Idaho law, or for any purpose of use authorized under the water rights for Lucky Peak Reservoir.

1) Review of the origins of the condition, and some discussion of the development of the last sentence of Condition 907, as that sentence does not appear in the earliest versions of the condition.

The earliest instance of a condition limiting diversion to times when flows in the Boise River are greater than 240 cfs appears to be on water right 63-147B. The condition on water right 63-147B states:

During the period beginning October 16 and ending November 15 in any irrigation season, there will be no diversion of water for this right if the amount of water released from Lucky Peak Dam into the Boise River is equal to or less than 240.0 cubic feet per second.

This condition was the product of settlement discussions between Idaho Rivers United, Idaho Department of Fish & Game (IDFG), and the transfer applicant (Boise Valley Irrigation Ditch Co.) during processing of Transfer No. 5119. The Idaho Department of Water Resource (IDWR) was not a party to those discussions. The condition went into effect when Transfer No. 5119 was approved on February 4, 1998.

On April 1, 1999, IDWR issued water right permits 63-12399 and 63-12420 with conditions to address the concerns of the Boise Project Board of Control and associated irrigation entities, IDFG, and Idaho Rivers United. The condition on 63-12399 and 63-12420 is the current language for Condition 907, as quoted above, without the last sentence. In other words, the condition on the two rights contains the first three sentences of Condition 907, but not the last sentence. IDWR also conditioned permits 63-12399 and 63-12420 with the current standard Condition 908 language cited above. The conditions on 63-12399 and 63-12420 resulted from settlement discussions among the parties in those contested cases. IDWR was not a party to those settlement discussions, nor was it involved in the establishment of the dates and benchmark flows described in those conditions and currently described in Condition 907.

The last sentence of Condition 907 first appeared in water right permit 63-31409, which IDWR issued on March 19, 2004. The sentence resulted from contested case settlement discussions between the permit applicant (United Water Idaho, Inc.) and the other contested case parties

IDWR Memo Re: Origins of Water Right Condition 907 and Implementation of Water Rights Page 2 of 7
with Conditions 907 and 908 in the Boise River Water Right Accounting Program

(Boise Project Board of Control, United States Bureau of Reclamation, Nampa & Meridian Irrigation District, Pioneer Irrigation District, and Settlers Irrigation District). IDWR was not a party to those discussions.

On September 6, 2013, IDWR added Condition 907 and 908 to IDWR's database of standard approval conditions. The usage description field states that Condition 907 should be used on new water right permits for unmitigated consumptive use of surface water or shallow ground water tributary to the Boise River upstream from Star Bridge. The language of Condition 907 was derived well before its addition to the database. IDWR has not changed the language of Condition 907, including the last sentence, since it was added to the condition database on September 6, 2013.

2) Administrative history of Streamflow Maintenance Releases

240 cfs Benchmark Stream Maintenance Flow¹

Following the completion of Lucky Peak Dam in 1955, the United States Bureau of Reclamation (Reclamation) filed a water right application for 278,000 acre feet (AF) of usable storage for the purpose of "irrigation and power for irrigation pumping". The State of Idaho on behalf of IDFG protested the application due to concerns that closures to the outlet of the dam during the filling of upstream reservoirs and periods of annual maintenance would result in low flows causing problems for fish and wildlife in the lower Boise River. The protest was resolved by amending the application to state that "the permit is issued on condition that the yield of water from 50,000 AF of space be available for maintaining winter time flow in the Boise river below Boise Diversion Dam under a release pattern established from time to time by the director of the Idaho Fish and Game Department." IDWR issued the permit for water right 63-3618 in 1964.

By the mid-1970s, Reclamation abandoned its plans for a Mountain Home Irrigation project, which resulted in 116,250 AF of new uncontracted storage space. In 1984, Reclamation applied to IDWR to amend water right 63-3618 to include 152,300 AF for streamflow maintenance. IDWR approved the amendment in 1985. Water right 63-3618 was decreed in the Snake River Basin Adjudication with a streamflow maintenance storage amount of 152,300 AF, and the following condition:

The Bureau of Reclamation and Idaho Department of Fish and Game shall provide joint written instructions to the Director of the Idaho Department of Water Resources, for conveyance to the watermaster, regarding release of the Lucky Peak streamflow maintenance storage water.

Following establishment of the storage account for 152,300 AF, streamflow maintenance flows below Lucky Peak Reservoir averaged 150 cfs through the late 1980s and early 1990s. Since 1994, streamflow maintenance flows have been 240 cfs in most years.

The 240 cfs benchmark flow is not related to flood control operations. The delivery of 240 cfs of storage for streamflow maintenance does not occur when flood control releases are occurring below Lucky Peak Dam.

¹ Historical information taken from a summary report written in April 2019 by John Cassinelli, Idaho Department of Fish and Game.

1,100 cfs Benchmark Stream Maintenance Flow

The basis for the 1,100 cfs benchmark flow and the dates associated with it are not documented. They appear to be the product of settlement discussions for water rights 63-12399 and 63-12420. IDWR was not a party to those discussions. There are no river operations that maintain a discharge of 1,100 cfs in the Boise River.

3) How Conditions 907 and 908 are implemented in the accounting program, both in previous years and as contemplated for this year's upgrade of the accounting program.

Water Right Accounting

Water right accounting is a set of computational tools that the watermasters on the Bear, Big Lost, Boise, Payette, and Upper Snake Rivers use to quantify the natural flow available for delivery to water right holders, track natural flow and storage use, and determine the water right priority in each reach of the river. The water right accounting program is run after-the-fact and deploys a daily time step. The program distributes natural flow to water rights using an iterative loop. It uses a water right list that is organized with the most senior rights at the top of the list and the most junior water rights at the bottom. Sequencing of rights by priority is modified to comply with conditions on water rights. The water right accounting program first determines the amount of natural flow available to satisfy water rights in each reach of the river. The program then begins the water right accrual routine. The first water right on the water right list is selected. Depending on how much natural flow is available in the river reach in which the water right point of diversion resides, the program will accrue a flow rate up to the authorized diversion rate of the water right and subtract that accrual from the natural flow available from that reach and all downstream reaches. The program then selects the next right on the water right list and implements the accrual process again. The water right accrual routine continues until either all of the water rights on the list are satisfied or the available natural flow is zero. When there isn't natural flow available to meet the entire diversion of a water user, the water user is charged storage for the difference between the natural flow available and amount diverted.

The release of storage water for streamflow maintenance from Lucky Peak during the winter months has been included in the Boise River water right accounting since 1987. The stream maintenance portion of water right 63-3618 is split into two accounts in the Boise River water right accounting. The IDFG storage account has 50,000 AF of storage space and is listed on accounting reports as "F&G Instream". The Reclamation storage account has 102,300 AF of storage space and is listed on accounting reports as "USBR Instream". The IDFG and Reclamation storage accounts receive their storage allocations for the water year on the Day of Allocation², the same as all other storage accounts. Operational loss is storage water that passes the Middleton stream gage during the irrigation season. Storage accounts normally receive a proportional reduction in their storage allocation for operational loss. The streamflow maintenance allocations are not charged operational loss. Storage water that is delivered

² The Day of Allocation for an irrigation season is the first day after: (1) the last day of reservoir accrual to reservoir rights has occurred in the water rights accounting, (2) diversion demand is equal to or greater than the available natural flow, and (3) the maximum physical total reservoir system contents has occurred.

passed the Middleton stream gage is considered to have left the Boise River Basin. The storage space for the water delivered past the Middleton stream gage becomes the last space to fill in the reservoirs in the subsequent water year(s). Streamflow maintenance is not considered to be an out of basin delivery, so it does not become last to fill in the subsequent water year.

Delivery of 240 cfs of storage for streamflow maintenance occurs during the non-irrigation season, but it is not delivered during flood control releases from Lucky Peak. Delivery occurs from approximately October 16 to approximately March 31. The 240 cfs is split so that 1/3 is charged to the IDFG storage account and 2/3 is charged to the Reclamation storage account. The rate of release and split have both varied over time. Some of the streamflow maintenance storage allocation is normally delivered before the end of the water year on October 31. The remainder of the allocation is carried over into the next water year. The streamflow maintenance delivered from November until April is considered to be carryover from the previous water year. Each day that it is released, the accrual to the Lucky Peak water right is reduced by the same amount so that space can fill in the current year. This daily reduction in the Lucky Peak water right ends when water right 63-3618 has been satisfied.

Flood Control Conditions in the Water Right Accounting

Starting in 1998, Conditions 907 and 908 were added to water rights established on the Boise River below Lucky Peak. These water rights have relatively junior priority dates and were added near the bottom of the water right priority list. These water rights are satisfied like other water rights during the water right accrual routine; they accrue natural flow if it is available. No special programming code was needed in the Boise River water right accounting program to accommodate the 240 cfs provision in Condition 907 because streamflow maintenance releases are always storage water. Storage water is never available to satisfy natural flow water rights in the water rights accounting.

Condition 907 also requires the water right holder to not divert water when discharge in the Boise River is below 1,100 cfs. There are no storage releases or river operations that maintain a discharge of 1,100 cfs in the Boise River. No special programming code was added to the Boise River water right accounting program to accommodate the 1,100 cfs provision in Condition 907.

Condition 908 contains language that states the water right can only be exercised when authorized by the Water District 63 watermaster. There is no special programming code to implement condition 908 in the water right accounting program. Once the irrigation season starts, each user with permission from the watermaster determines for themselves when to divert water. The junior priority dates of water rights with Condition 907 and 908 means they only are in priority during times of high runoff, which normally means the flow in the Boise River below Lucky Peak significantly exceeds 1,100 cfs. This assumption is valid a majority of the time, but there are times when it is not.

Proposed Changes to the Water Right Accounting

A contested case titled *In the Matter of the Accounting for the Distribution of Water to the Federal On-Stream Reservoirs in Water District 63 (Refill)* was initiated in 2013 and settled through a stipulated agreement in 2019. Paragraph 18 of the agreement states:

IDWR Memo Re: Origins of Water Right Condition 907 and Implementation of Water Rights Page 5 of 7
with Conditions 907 and 908 in the Boise River Water Right Accounting Program

[T]he Department will update the Water District 63 water right accounting system to account for the distribution of water pursuant to conditions on water rights authorizing diversion when the Boise River below Lucky Peak Dam is 'on flood release.'

IDWR is proposing to make the following changes to meet the stipulation: 1) identifying water rights containing conditions related to flood control releases, 2) developing a method to "flag" these water rights in the water right list and adding programming code to the water right accounting program to implement the flood control conditions, and 3) developing a process for the Boise River watermaster to determine when flood control releases are occurring.

Water rights with conditions limiting diversion to times when flood control releases are occurring below Lucky Peak were researched and compiled by the IDWR Water Right Section. Fifteen water rights with flood control conditions were identified (Table 1).

A data input file and the programming code will be updated to correctly distribute water rights with flood control conditions. A water right list is an input to the water right accounting program. Flood control water rights will be identified in the water right list using unique numbers assigned by IDWR water right accounting staff. The water right accounting programming code will be updated to identify water rights "flagged" with flood control conditions during the water right accrual routine. When it encounters a "flagged" water right, the new code added to the program will determine if the water right is authorized to divert water according to the specific flood control conditions on the water right. The flagged water rights will continue to be subject to the criteria every water right must meet to accrue water, such as the availability of natural flow at the point of diversion.

Some water rights require watermaster authorization to divert natural flow flood control releases from the Boise River below Lucky Peak. The watermaster will use the IDWR watermaster diversion data entry software to document when flood control releases are occurring and authorize these water rights. An artificial diversion named "Flood Control Active 0 – no, 1 – yes", will be created and assigned a Site ID of 13201501. A daily value of 0 or 1 will be entered by the watermaster to indicate if flood control releases are occurring. The data for Site ID 13201501 will be imported into Boise River water right accounting with the rest of the diversion data for Water District 63.

The last sentence of Condition 908 states that the water right is not authorized "to divert water released from storage to augment lower Snake River flows during the migration of Snake River Salmon as authorized under Idaho law, or for any purpose of use authorized under the water rights for Lucky Peak Reservoir." The condition refers to the diversion of storage water by a natural flow water right. The water right accounting does not allow for natural flow water rights to divert storage water to satisfy the right, so no special code will be added to implement this portion of Condition 908.

The water right accounting program is a tool to facilitate river regulation and it cannot replace physically managing the river. The watermaster will continue to be responsible for authorizing when and how much water can be diverted at each point of diversion.

Table 1. Water Rights with Boise River Water Right Accounting Program Flood Conditions.

Water Right	Water Right Condition Code	Point of Diversion
63-11439		Trinity Springs
63-12550		Canyon County Canal
63-12577		Shakespeare
63-31869		Ferguson
63-32066		Andrews
63-32467		Andrews
63-32911		Tree Top Ranches
63-34334		Thorpe
63-147B		Surprise Valley / Micron
63-149A		Rossi Mill
63-20041		Boise City Canal
63-12420	907, 908	Surprise Valley / Micron
63-12399	907, 908	Surprise Valley / Micron
63-31409	907, 908	Suez
63-34348	907, 908	Elmore County

**Appendix C MEMORANDUM BY MATT ANDERS ADDRESSING ACCOUNTING SYSTEM
(2/27/2020) ("ANDERS MEMO")**



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

February 27, 2020

Water District 63 Water User,

In compliance with Stipulation 16 of the "Refill" stipulated agreement signed in 2018, the Idaho Department of Water Resources (IDWR) is providing notice of the proposed updates to the Boise Water Right Accounting Program. IDWR prepared the attached technical memo describing the proposed updates. We are sending this letter to the WD63 Watermaster, WD63 Advisory Committee, and each signatory of the stipulated agreement. We will also post this memo on the IDWR website.

Consistent with Stipulation 16, WD63 water users can submit written comments regarding the proposed updates. The deadline for submitting comments is March 23, 2020. IDWR will try to respond to all comments in the form of a letter before implementing the new updates in the water right accounting.

Submit Comments To:

Matt Anders
IDWR
322 East Front St
PO Box 83720
Boise ID, 83720

Feel free contact me with questions at (208) 287-4932 or matthew.anders@idwr.idaho.gov.

Sincerely,

Matt Anders
Hydrology Section Supervisor

MEMO

State of Idaho
Department of Water Resources
322 E Front Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700

Date: 2/27/2020
To: Mat Weaver, Deputy Director
From: Matt Anders, Hydrology Section Supervisor *MA*
cc: Garrick Baxter, Deputy Attorney General
Sean Vincent, Hydrology Section Manager
Subject: Implementation of the Refill Stipulated Agreement in the Boise Water Right Accounting

Introduction

The contested case titled "*In the Matter of the Accounting for the Distribution of Water to the Federal On-Stream Reservoirs in Water District 63*" ("Refill") was initiated in 2013 and settled through a stipulated agreement in 2019. The agreement included several stipulations related to the Idaho Department of Water Resources ("IDWR") Boise Water Right Accounting Program ("water right accounting"). The purpose of this memo is to document IDWR's proposed implementation of the stipulations included in the agreement related to water right accounting.

Background

Water Right Accounting

Water right accounting is a computational program that the Water District 63 ("WD63") Watermaster ("Watermaster") uses to (1) quantify the natural flow available for delivery to water rights, (2) track natural flow and storage use, and (3) determine the water right priority in each reach of the Boise River. The water right accounting is run after-the-fact. It distributes natural flow to water rights using a daily iterative loop and generates a daily record.

When executed, the water right accounting calculates the amount of natural flow that is available to satisfy water rights in each reach of the river. A river reach is defined as a river segment within a basin that has beginning and ending points that are measured or calculated. Natural flow is a calculated value of the water available in a given river reach expressed in cubic feet per second ("cfs"). If the calculated value is positive, the natural flow is said to be a "gain." If the calculated value is negative, the natural flow is said to be a "loss." The reach gain calculation is equal to the reach outflow minus the reach inflow, plus all reach diversions, plus the change in reservoir content, plus reservoir evaporation.

Reach Gain = Outflow – Inflow + Σ (Diversions) + Δ Reservoir Content + Reservoir Evaporation

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Following the calculation of available natural flow in each reach, the water right accounting executes a water right accrual routine ("accrual routine") to determine the amount of natural flow diverted by each diversion. Natural flow delivery to diversions is based on the Prior Appropriation Doctrine. The priority date of a water right indicates when the water right was first developed and its relative delivery sequence when compared to other water rights. An earlier (or senior) priority water right is delivered natural flow ahead of a later (or junior) priority water right when the natural flow is insufficient to fill all water rights in a reach.

To determine the priority sequence of delivery, the accrual routine relies on a master water right list ("RTS") as an input file to the water right accounting. Water rights are generally arranged on the RTS by priority date with the most senior water right at the top of the list and the most junior at the bottom. When a new water right is added to the RTS, IDWR staff carefully review all of the elements of the water right, all conditions, and appurtenant stipulations to ensure the Watermaster administers the water right consistent with the requirements of the water right. Following a careful review, IDWR staff modify the RTS to include the new water right. Sometimes, depending on the elements of a water right, a water right can be placed in the RTS based on its effective priority date and not on its actual priority date.¹

When the accrual routine is executed, the first water right from the RTS is selected. Depending on how much natural flow is available in the river reach in which the water right point of diversion resides, the accrual routine will accrue a flow rate up to the diversion limits of the water right and subtract that accrual from the remaining natural flow available in that reach and all downstream reaches. The accrual routine then selects the next right from the RTS and implements the accrual process again. The accrual routine continues until either all the water rights on the list are satisfied, or the remaining natural flow in the most downstream reach of the river (the Middleton reach for the Boise River) is equal to zero. When the natural flow is insufficient to meet the entire amount of water diverted at a diversion, the diversion is charged storage in an amount equal to the difference between the natural flow available and the actual flow diverted. Any remaining natural flow in the Middleton reach of the river is considered unused water leaving the system that is available for appropriation.

The Day of Allocation occurs on the day when the reservoir fill available for spaceholders' allocations has reached its maximum. IDWR staff and the Watermaster currently use three criteria to determine the Day of Allocation for the Boise basin: 1) the remaining natural flow in the Middleton reach is zero, 2) the maximum physical contents of the reservoir system for the irrigation season has occurred, and 3) the last day of accrual to unfilled reservoir rights following the peak runoff has occurred. Reservoir water rights are out of priority after the Day of Allocation until later in the irrigation season when user demand decreases and the water right accrual values in accounting are reset to zero.

Flood Control Operations

The reservoir system is generally operated throughout the year to store as much water as possible. The exception to this general rule is the release of water from the reservoirs for flood control. Flood control releases are reservoir operations whereby stored water is evacuated from

¹ As an example, a hydro power water right could be licensed or decreed with a specific priority date, but subordinated through a condition or remark to all future non-hydro power water rights. In this instance, the hydro power water right's effective priority date would likely be junior to its actual priority date. In addition, the effective priority date changes every time a new junior non-hydro power water right is subsequently added to the water right accounting to ensure that it remains subordinate to "future uses."

a reservoir before and during peak inflows. These releases allow the reservoir to maintain adequate vacant space to capture water during peak inflows and to release less water from the reservoir than is entering the reservoir to prevent or lessen downstream flooding.

The United States Bureau of Reclamation ("Reclamation") and Army Corps of Engineers ("Corps") jointly operate the Arrowrock, Anderson Ranch, and Lucky Peak dams as a system to manage flood control and water storage needs. The Reclamation and Corps do not rely on the water right accounting to determine or inform their reservoir operations.

The refill water rights, which are the subject of this technical memo, were established to authorize the legal storage of water in the reservoirs during and after flood control releases when the primary reservoir water rights are satisfied. They will be discussed in greater detail below.

Implementation of the Refill Water Rights Stipulated Conditions

The following sections focus on how IDWR proposes to update water right accounting to implement the stipulated agreement. The primary intent of this technical memo is to sufficiently describe and detail the proposed changes to water right accounting such that the signatories to the stipulation and all water users in Water District 63 can evaluate the proposed changes and submit written feedback to IDWR if needed.

Stipulation Paragraph 16

Stipulation 16 on page 8 of the stipulated agreement reads as follows:

The Parties stipulate and agree that upon issuance of the partial decrees for water right nos. 63-33734A and 63-33734B, the Department will update the Water District 63 water right accounting system to account for the distribution of water to water right nos. 63-33734A and 63-33734B consistent with their partial decrees. The Department will provide the Parties, the Water District 63 Advisory Committee, the Water District 63 Watermaster, and all water right holders in Water District 63 with notice of, and an opportunity to submit comments on, the proposed updates to the accounting system. Any aggrieved Parties may request a contested case on these matters, but such a contested case will be limited to preclude raising any issues raised or addressed in the Contested Case that was the subject of the judicial review proceedings in Case No. CV-WA-2015- 21376 (Consolidated Ada County Case No.CV-WA-2015-21391).

IDWR added water rights 63-33734A ("Refill 1") & 63-33734B ("Refill 2") to the RTS used in water right accounting to satisfy this stipulation. The priority date and subordination clauses of the Refill 1 water right (see Attachment A) resulted in its sequential placement in the RTS as water right number 954. Refill 1's sequential location makes it the most junior water right in water right accounting (see Attachment G). The priority date and subordination clauses of the Refill 2 water right (see Attachment B) resulted in its sequential placement in the RTS as water right number 949. Refill 2's sequential location makes it the sixth most junior water right in water right accounting (see Attachment G). The sequential locations of the Refill 1 and 2 water rights in the RTS may change over time as new water rights are established on the Boise River and added to the water right list.

The Refill 2 water right has a provision stating that the Watermaster will only allow it to accrue water when he has received notice in writing from Reclamation that it intends to store water pursuant to the Refill 2 water right (see Attachment B). The ability to "turn on" the accrual of water to the Refill 2 water right, and subsequently "turn off" accrual to the water right, is unique to all other storage water rights in VDB3. This provision is informally referred to as the "on/off switch." To implement the on/off switch provision, IDWR updated the water right accounting in two ways. First, IDWR added a new artificial diversion with the number "15201505" to the IDWR Watermaster Data Entry Software (<https://idwr.idaho.gov/apps/wm/DiversionDataApplication>). This data entry software is used by watermasters throughout Idaho to enter water user diversion data. While the general public can view the data, only water district staff authorized by IDWR can enter data into the application. The Watermaster will enter a "1" in diversion "15201505" for each day of the year that the Refill 2 water right is authorized to accrue natural flow and a "0" for each day the Refill 2 water right is not authorized to accrue natural flow. IDWR selected this method because it creates a historical record of accrual to Refill 2 that can be viewed by the public in near-real-time. Second, to implement the new on/off switch provision, IDWR added new code to water right accounting (see Attachment C). The new code was added to the accrual routine to determine each day if the accrual of natural flow to the Refill 2 water right is authorized by the Watermaster. If the Watermaster has authorized accrual to Refill 2, all available natural flow in the reach is accrued to the water right until or unless its volume limit has been satisfied. If the Watermaster has not authorized diversions, the diversion rate for the Refill 2 water right is set to zero cfs for that accounting day.

Staff in IDWR's Hydrology Section tested the updates made to water right accounting to implement the Refill 1 and 2 water rights using data from the 2017 water year. The Refill 1 water right came into priority and began accruing natural flow after all the primary reservoir water rights were satisfied, and all natural flow demand was satisfied. The Refill 2 water right accrued water when it was in priority and authorized by the Watermaster to do so. Based on the testing results, IDWR concludes that its updates to water right accounting have produced the intended results.

Adding the Refill 1 and 2 water rights to water right accounting impacts the remaining natural flow below Lucky Peak Reservoir. When the Refill 1 and 2 water rights are in priority they accrue all available natural flow at Lucky Peak Dam. It is important to note that the accrual of water to the refill water rights does not necessarily mean that the accrued water is physically stored in the reservoirs. It will often be the case that water accrued to the refill water rights will physically flow through or be released from the reservoirs during times of accrual. As a result, accruals to the refill water rights will reduce the remaining natural flow available to satisfy water rights in reaches downstream of Lucky Peak Reservoir and increase the stored flow in the reaches downstream of Lucky Peak Reservoir (see Attachment D). The only natural flow available to satisfy junior water rights in reaches downstream of Lucky Peak Reservoir is the reach gains from those reaches. The addition of the Refill 1 and 2 water rights does not change the amount of water in the Middleton reach available for appropriation. The stored flow in the Middleton reach in excess of deliveries to existing water right holders is considered unused water leaving the system that is available for appropriation.

Adding the refill water rights to water right accounting impacts one of the criteria used to determine the Day of Allocation. Because the refill water rights do not have diversion rate limits, their addition to the water right accounting causes the remaining natural flow in the Middleton reach to equal zero cfs any time natural flow demand below Lucky Peak Reservoir exceeds the reach gains below Lucky Peak Reservoir. As a result, the remaining natural flow at Middleton is

no longer a useful criterion to determine the Day of Allocation. Moving forward, IDWR and the Watermaster will rely on only two criteria to determine the day of allocation. The Day of Allocation will be determined to have occurred when (1) the reservoir system has reached maximum physical contents for the irrigation season, and (2) the last day of accrual to unfilled reservoir rights following the peak runoff has occurred.

In compliance with this stipulation, IDWR has noticed water users of the proposed updates to water right accounting. IDWR presented the proposed water right accounting updates at the Water District 63 Advisory Committee Meeting on December 11, 2019, and the Water District 63 Annual Meeting on January 13, 2020. IDWR prepared this technical memo describing the proposed updates to water right accounting. IDWR will post this memo on its website and send it to the Watermaster, WD63 Advisory Committee, and each signatory of the stipulated agreement.

Consistent with this stipulation, WD63 water users can submit written comments regarding the proposed refill water right updates to water right accounting to IDWR in the manner described in the cover letter that will accompany the distribution of this technical memo. IDWR will try to respond to all comments in the form of a letter before implementing the new updates in the water right accounting.

Stipulation Paragraph 17

Stipulation 17 on page 8 of the stipulated agreement reads as follows:

For all future material modifications of the Water District 63 water right accounting system IDWR will provide notice and an opportunity to comment on the change(s). Any party aggrieved by the Director's action in making a material modification has the right to request a contested case in accordance with Idaho Code § 42-1701A and the provisions and standards set forth in chapter 52, title 67, Idaho Code.

IDWR will provide notice to WD63 water users of future proposed material modifications to the water right accounting to fulfill this stipulation. IDWR interprets "material modification" to be programming code changes to the water right accrual routine. Updates that do not change this routine (e.g., adding water rights, adding diversions, modifying the report, etc.) are not considered "material modifications." IDWR will prepare a technical memo describing future proposed material modifications to water right accounting and post it on the IDWR website. IDWR will also give a presentation describing future proposed material modifications at the WD63 Annual Meeting. IDWR will consider additional outreach surrounding future changes to the water right accounting as requested by WD63 water users.

WD63 water users are encouraged to review future modifications and submit comments to IDWR as needed. IDWR will try to respond to all comments in the form of a letter before implementing future updates into water right accounting.

Stipulation Paragraph 18

Stipulation 18 on page 8 of the stipulated agreement reads as follows:

The Parties stipulate and agree that the Department will update the Water District 63 water right accounting system to account for the distribution of water pursuant to

conditions on water rights authorizing diversions when the Boise River below Lucky Peak Dam is "on flood release."

In fulfillment of this stipulation, IDWR has identified all water rights that it is aware of with conditions related to flood control releases. To accomplish this task, IDWR queried its water right database to find water rights containing conditions related to flood control releases. The query was designed to exclude shoulder season conditions (see Attachment E). Shoulder season conditions allow a water right to divert water before April 1 or after October 31. Shoulder season conditions usually are not included in water right accounting and instead are regulated directly by the Watermaster. IDWR's query identified fifteen water rights with conditions related to flood control releases. These water rights are summarized in Attachment F. Water rights 63-31869 and 63-149 were not added to the water right accounting because their decreed uses are aesthetic or wildlife. Water rights with non-consumptive uses such as these are usually not included in the water right accounting. Water rights 63-32911 and 63-34334 are recently approved water rights that have not yet been added to water right accounting. When they are added, their elements and conditions will be reviewed and the water right accounting will be updated if necessary to implement the conditions related to flood control releases. Water right 63-20041 was not added to the water right accounting because the condition related to flood control releases is a shoulder season condition. Water right 63-34348 is a recently approved water right permit. When the water user installs the diversion works and begins diverting water, the elements and conditions of the water right will be reviewed and water right accounting will be updated if necessary to implement the conditions related to flood control releases.

Some water rights have a condition requiring watermaster authorization to divert flood control releases. IDWR developed a process for the watermaster to authorize these water rights to fulfill this stipulation. This process included adding a new artificial diversion with the number "15201501" to the IDWR Watermaster Data Entry Software (<https://idwr.idaho.gov/apps/wm/DiversionDataApplication>). The Watermaster will enter a "1" in diversion "15201501" for each day of the year that flood control releases are occurring and these water rights are authorized, and a "0" for each day of the year that flood control releases are not occurring. IDWR selected this method because it creates a historical record of the number of days that water rights with flood control diversion conditions that require authorization by the Watermaster diverted water that can be viewed by the public in near-real-time.

In fulfillment of this stipulation, IDWR has developed a method to "flag" water rights in the water right list that have conditions related to flood control releases. The RTS contains multiple fields (see Attachment G) describing different elements of a water right. The "Variable Right Field" is used to "flag" water rights for special calculations in water right accounting. IDWR has added administered water rights with conditions related to flood control releases to the water right list and it has populated the "Variable Right Field" with a number between 900 and 908 to indicate the specific type of flood control condition(s) on the water right.

IDWR added new code to the water right accounting program to implement the specific flood control condition(s) on water rights to fulfill this stipulation (see Attachment C). Programming code was added to the accrual routine that determines if a water right has a value between 900 and 908 in the "Variable Right Field." If the programming code detects a value between 900 and 908, it determines if the specific condition(s) on the water right related to flood control releases have been met. If the condition(s) have been met, the accrual routine accrues natural flow to the water right up to its diversion rate. If not, the water right diversion rate is set to zero cfs for that accounting day.

Staff in IDWR's Hydrology Section tested the updates made to water right accounting to implement the accrual of water to water rights that have conditions related to flood control releases using input data from the 2017 and 2018 water years. For the 2017 water year, implementation of the new code resulted in the "Surprise Valley/Micron" diversion diverting 30 acre-feet more natural flow, and subsequently being charged 30 acre-feet less storage use. This outcome was the result of the incorrect handling of this water right by prior versions of the accounting program. No other water rights with conditions related to flood control releases were affected because they were either not exercised in 2017 or they never came into priority. Similarly, in 2018, no water rights with limiting flood control conditions were affected because, again the water rights were either not exercised, or they never came into priority.

IDWR staff tested the updates related to the administration of water rights with flood control release conditions using input data from the 2018 water year that had artificially increased and decreased flow rates for the river and diversions. The testing results allow IDWR staff to conclude the updated water right accounting is functioning as intended. The new Watermaster authorization procedure allows/limits diversion of natural flow by water rights bearing flood control release limitations. As expected, water users can divert natural flow up to the total diversion rate of their water rights, including water rights with conditions related to flood control releases, but are charged storage for their diversion amounts that exceed their water right diversion limits. Based on its analysis, IDWR staff conclude that the updates do not adversely impact other parts of the water right allocation routine.

Attachment A – Refill 1 Partial Decree

RECEIVED
JUL 22 2019
DEPARTMENT OF
WATER RESOURCES

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

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUL 19 2019

By _____ Clerk
Deputy Clerk

In Re SRBA)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(B) FOR
Water Right 63-33734A

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 3,672,732.00 AFY

PRIORITY DATE: 9/30/1965

POINT OF DIVERSION: TOWN ROAD SIX SEVEN East 7 Within Ada County

PURPOSES AND PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION STORAGE	01/01 12/31	3,672,732.00 AFY
MUNICIPAL/INDUSTRIAL STORAGE	01/01 12/31	3,672,732.00 AFY
STREAMFLOW MAINTENANCE STORAGE	01/01 12/31	3,672,732.00 AFY

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage end uses as provided in the contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

SRBA – PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 63-33734A

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Page 8 of 22

PLACE OF USE:

Place of use is on those lands identified under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.


Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this Partial Decree. However, as a matter of Idaho Constitutional and Statutory law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.
2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.
3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.
4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of a final unified decree as it may be amended. Section 42-1412(6), Idaho Code.
5. The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective September 13, 2018, which is incorporated herein by reference.
6. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.
7. Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.
8. This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

RULE 54(b) CERTIFICATION

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Eric J. Wilman
Presiding Judge of the
Snake River Basin Adjudication

Attachment B – Refill 2 Partial Decree

RECEIVED

JUL 22 2019

DEPARTMENT OF
WATER RESOURCES

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



In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 63-33734B

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 587,056.00 AFY

Water right nos. 63-33734B, 63-303, 63-3613, 63-3614, 63-3618, and 63-33734A, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.

This water right may be exercised only to replace water released for flood control purposes, as determined by the Water District 63 Watermaster, supervised by the Director of the Department of Water Resources. In determining the timing, duration, and magnitude of flood control releases for the purpose of administering this water right and distributing natural flow in accordance with state law, the Watermaster as supervised by the Director will consider, but will not be bound by, the November 20, 1953, "Memorandum of Agreement Between the Department of the Army and the Department of the Interior for Flood Control Operation of Boise River Reservoirs, Idaho" (hereinafter "MOA") and the 1985 "Memorandum of Understanding for Confirmation, Ratification, and Adoption of the Water Control Manual-Boise River Reservoirs, Boise, Idaho" (hereinafter "Manual"). The Watermaster as supervised by the Director may also consider, but will not be bound by, the United States' determinations of the purposes for which water is being released from Lucky Peak Dam. The Watermaster as supervised by the Director may also consider any other information the Director deems relevant.

The Watermaster's determinations, as supervised by the Director, of the timing, duration, and magnitude of flood control releases shall not affect or bind the United States' determinations, authority, or discretion under federal law for purposes of operating its reservoirs for flood control purposes in accordance with the 1946 Flood Control Act, 60 Stat 641, as amended or supplemented, and the MOA and Manual as they may be revised pursuant to the forgoing law.

Water will not accrue towards the satisfaction of this water right until the United States of America, acting through the Bureau of Reclamation, has notified the Water District 63 Watermaster of the calendar date on which it intends to store water pursuant to this water right. Following initial notification, the United States can provide notification directing the Water District 63 Watermaster to stop and start the accrual of water pursuant to this water right, until the water right has been satisfied. All notifications must be made in writing. Each notification must identify the

SRBA - PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 63-33734B

Page 1

specific calendar date on which administrative action should occur. The identified calendar date cannot predate the date of the written notification.

PRIORITY DATE: 3/16/1973

POINT OF
DIVERSION: T02N R03E S11 SENE Lot 7 Within Ada County

PURPOSES AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION STORAGE	01/01 7/31	587,056.00 AFY
MUNICIPAL/INDUSTRIAL STORAGE	01/01 7/31	587,056.00 AFY
STREAMFLOW MAINTENANCE STORAGE	01/01 7/31	587,056.00 AFY

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage and uses as provided in contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

PLACE OF USE: Place of use is on those lands identified under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this Partial Decree. However, as a matter of Idaho Constitutional and Statutory law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.
2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.

SRBA - PARTIAL DECREE PURSUANT TO L.R.C.P. 54(b)
Water Right 63-33734B

Page 2

3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.
4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of a final unified decree as it may be amended. Section 42-1412(6), Idaho Code.
5. This water right is subordinate to the following water rights:
 - a. All surface water rights within IDWR Administrative Basin 63 with a priority date earlier than May 1, 2014, with a decreed or licensed diversion rate of less than 0.1 CFS;
 - b. All water rights listed on attachment A.
6. The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective September 13, 2018, which is incorporated herein by reference.
7. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.
8. Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.
9. This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

RULE 54(b) CERTIFICATION

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Eric J. Goldman
Presiding Judge of the
Snake River Basin Adjudication

Attachment C – Programming Code Updates

Code Update for Refill 2

BoiseAccountingModel.cs - Approximately Line 206

```
//Set activeRefill2 variable and zero Active Refill2 diversion
var activeRefill2 = diversions[13201505].LaggedFlow > 0.0;
diversions[13201505].LaggedFlow = 0; //cancel value
```

BoiseAccountingModel.cs - Approximately Line 814

```
//Set no Refill2 not authorized and set diversion rate to 0
if (!activeRefill2)
{
    wr.TemporaryDiversionRate = 0;
}
```

Code Update For Water Rights with Flood Control Conditions

BoiseAccountingModel.cs - Approximately Line 206

```
//Set activeFlood variable to flood condition and zero Active Flood diversion
var activeFlood = diversions[13201501].LaggedFlow > 0.0;
diversions[13201501].LaggedFlow = 0; //cancel value
```

BoiseAccountingModel.cs - Approximately Line 814

```
//Flood Control Water Rights - Set temporary water right to zero if conditions are not
satisfied. DJS 5/13/2016

//Instantiate flow variables required for flood conditional evaluation
var glnwdFlow = reaches.GetReachBySiteID(13210050).ReachInflow; //Glenwood gage. Flow at
Glenwood is the inflow to the Middleton Reach

var lpFlow = reaches.GetReachBySiteID(13203600).ReachInflow; //Lucky Peak flow is inflow
to the reach ending at 13203600 (Boise River blw Diversion Dam)

var parmaFlow = reaches.GetReachBySiteID(13213000).MeasuredDischarge; //Boise River at
Parma is reach outflow of reach ending at 13213000 (Boise River at Parma)
var usbrFlow = diversions[13201991].LaggedFlow; //USBR diversion
var idfgFlow = diversions[13201990].LaggedFlow; //IDFG diversion
var nycFlow = diversions[13203000].LaggedFlow; //New York Canal diversion

//10-31-19: MAnders - update flood condition code
var lpMinusNyc = lpFlow - nycFlow; // Lucky Peak minus New York Canal
//10-31-19: MAnders - end
```

```

//Evaluate flood control water right conditions with VariableRight indicator
switch (wr.VariableRight)
{
    case 900:
        if (!activeFlood)
        {
            //set water rights with flood control 900 = 0
            wr.TemporaryDiversionRate = 0;
        }
        break;

    case 901:
        if (glnwdFlow < 240)
        {
            //set water rights with flood control 901 = 0
            wr.TemporaryDiversionRate = 0;
        }
        break;

    case 902:
        if (usbrFlow + idfgFlow > 0)
        {
            //set water rights with flood control 902 = 0
            wr.TemporaryDiversionRate = 0;
        }
        break;

    case 903:
        if (usbrFlow + idfgFlow > 0 && usbrFlow + idfgFlow >= parmaFlow)
        {
            //set water rights with flood control 903 = 0
            wr.TemporaryDiversionRate = 0;
        }
        break;

    //10-31-19: MAnders - update flood condition code
    case 904:
        var fcDate4 = isLeap ? 290 : 289; // October 16
        var fcDate5 = isLeap ? 320 : 319; // November 15
        var fcDate6 = isLeap ? 76 : 75;   // March 16
        var fcDate7 = isLeap ? 106 : 105; // April 15

        if (laggedDay.DayOfYear >= fcDate4 && laggedDay.DayOfYear <= fcDate5 &&
lpMinusNyc <= 240)
        {
            wr.TemporaryDiversionRate = 0;
        }

        if (laggedDay.DayOfYear >= fcDate6 && laggedDay.DayOfYear <= fcDate7 &&
lpMinusNyc <= 1100)
        {
            wr.TemporaryDiversionRate = 0;
        }
        break;

    //10-31-19: MAnders - end

    case 908:

```

```

//10-31-19: MAnders - update flood condition code
//var lpMinusNyc = lpFlow - nycFlow; // Lucky Peak minus New York Canal
//10-31-19: MAnders - end

var fcDate1 = isLeap ? 61 : 60; //March 1
var fcDate2 = isLeap ? 122 : 121; //May 31
var fcDate3 = isLeap ? 168 : 167; //June 16

if (!activeFlood)
{
    wr.TemporaryDiversionRate = 0;
}
else
{
    if (laggedDay.DayOfYear >= fcDate1 && laggedDay.DayOfYear < fcDate2
    && lpMinusNyc < 1100) //flood condition 907 and 908)
    {
        wr.TemporaryDiversionRate = 0;
    }
    if (laggedDay.DayOfYear < fcDate1 && lpMinusNyc < 240 ||
    laggedDay.DayOfYear >= fcDate3 && lpMinusNyc < 240)
    {
        wr.TemporaryDiversionRate = 0;
    }
}
break;
}

```

**Attachment D – Example of the Change to Remaining Natural Flow and Stored Flow
Caused By Adding Refill 1 & 2 Water Rights to Water Right Accounting**

• Existing Water Right Accounting

WATER DISTRICT 63 - BOISE RIVER FLOW ACCOUNTING (VER NOT PUBLISHED-DEBUG) - APR 7, 2017												
REACH FLOWS IN CFS	ACTUAL DATE	NATURAL FLOW	ACTUAL FLOW	ACTUAL REMAINING FLOW	OPERATN FLOW	STORED FLOW	EVAP FLOW	NATURAL FLOW	TOTAL FLOW	REACH	LAST RIGHT	REACH
1 TWIN SPRINGS	APR 7	4720.	4720.	4720.	0.	0.	0.	0.	0.	4720.	20051228	4720.
2 FEATHERVILLE	APR 7	2970.	2970.	2970.	0.	0.	0.	0.	0.	2970.	19401209	2970.
3 FERRIS TO ANDERSON RANCH	APR 7	4421.	4421.	4421.	0.	0.	0.	4421.	0.	4421.	19401209	1451.
4 ANDERSON RANCH TO ARROWROCK	APR 7	10930.	8310.	6509.	0.	1801.	10.	0.	0.	1789.	20051228	1789.
5 MORIS CREEK	APR 7	1600.	1600.	1600.	0.	0.	0.	0.	0.	1600.	20051228	1600.
6 ARROWROCK TO LUCKY PEAK	APR 7	12329.	9080.	7908.	0.	1172.	11.	0.	0.	201.	20051228	201.
7 LUCKY PEAK TO DIVISN DAM	APR 7	12329.	7908.	6728.	0.	1172.	0.	1180.	1180.	0.	20051228	0.
8 DIVISN DAM TO BOISE	APR 7	12329.	7718.	6547.	0.	1172.	0.	182.	182.	0.	20051228	0.
9 BOISE TO GLENWOOD BR	APR 7	12544.	7880.	6708.	0.	1172.	0.	53.	53.	215.	20051228	215.
10 GLENWOOD BR TO MIDDLETON	APR 7	12754.	7890.	6568.	250.	1172.	0.	100.	100.	210.	20051228	210.
11 MIDDLETON TO CALDWELL	APR 7	13086.	8091.	6870.	50.	1172.	0.	231.	231.	332.	20051228	332.
12 CALDWELL TO NOTUS	APR 7	13342.	8347.	7126.	50.	1172.	0.	0.	0.	256.	20051228	256.
13 NOTUS TO PARMA	APR 7	13535.	8540.	7368.	0.	1172.	0.	0.	0.	193.	20051228	193.

• Water Accounting With Refill 1 & 2 – Remaining Natural Flow is reduced and Stored Flow is increased.

WATER DISTRICT 63 - BOISE RIVER FLOW ACCOUNTING (VER NOT PUBLISHED-DEBUG) - APR 7, 2017												
REACH FLOWS IN CFS	ACTUAL DATE	NATURAL FLOW	ACTUAL FLOW	ACTUAL REMAINING FLOW	OPERATN FLOW	STORED FLOW	EVAP FLOW	NATURAL FLOW	TOTAL FLOW	REACH	LAST RIGHT	REACH
1 TWIN SPRINGS	APR 7	4720.	4720.	4720.	0.	0.	0.	0.	0.	4720.	19650930	4720.
2 FEATHERVILLE	APR 7	2970.	2970.	2970.	0.	0.	0.	0.	0.	2970.	19401209	2970.
3 FERRIS TO ANDERSON RANCH	APR 7	4421.	4421.	4421.	0.	0.	0.	4421.	0.	4421.	19401209	1451.
4 ANDERSON RANCH TO ARROWROCK	APR 7	10930.	8310.	6509.	0.	1801.	10.	0.	0.	1789.	19650930	1789.
5 MORIS CREEK	APR 7	1600.	1600.	1600.	0.	0.	0.	0.	0.	1600.	19650930	1600.
6 ARROWROCK TO LUCKY PEAK	APR 7	12329.	9080.	1362.	0.	7718.	11.	6547.	0.	201.	19650930	201.
7 LUCKY PEAK TO DIVISN DAM	APR 7	12329.	7908.	182.	0.	7718.	0.	1180.	1180.	0.	19650930	0.
8 DIVISN DAM TO BOISE	APR 7	12544.	7718.	162.	0.	7718.	0.	182.	182.	0.	19650930	0.
9 BOISE TO GLENWOOD BR	APR 7	12754.	7890.	22.	0.	7718.	0.	53.	53.	215.	19650930	215.
10 GLENWOOD BR TO MIDDLETON	APR 7	13086.	8091.	323.	250.	7718.	0.	100.	100.	310.	19650930	310.
11 MIDDLETON TO CALDWELL	APR 7	13342.	8347.	579.	50.	7718.	0.	231.	231.	332.	19650930	332.
12 CALDWELL TO NOTUS	APR 7	13535.	8540.	822.	50.	7718.	0.	0.	0.	256.	19650930	256.
13 NOTUS TO PARMA	APR 7	13535.	8540.	822.	0.	7718.	0.	0.	0.	193.	19650930	193.

Attachment E – Example of a Water Right Shoulder Season Condition

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Watermaster and only when water is being released by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir or Lake Lowell as decreed in SRBA Case No. 39576.

Attachment F - Water Rights with Conditions Related to Flood Control Releases

Water Right	Point of Diversion	Summary of Conditions Related Flood Control Releases	Implemented in Water Right Accounting
63-11439	Trinity Springs	Water right is active with watermaster authorization.	Y
63-12550	Canyon County Canal	Water right is active when flows in Boise River at Glenwood Bridge are greater than 240 cfs.	Y
63-12577	Shakespeare	Water right is active when USBR plus IDFG diversions equal to zero.	Y
63-31869	Ferguson	Water right is active when USBR plus IDFG diversions equal to zero.	N (Aesthetic)
63-32066	Andrews	Water right is active when USBR plus IDFG diversions are less than the flow in the Boise River.	Y
63-32467	Andrews	Water right is active when USBR plus IDFG diversions are less than the flow in the Boise River.	Y
63-32911	Tree Top Ranches	Water right is active when USBR plus IDFG diversions are less than the flow in the Boise River.	N (On Hold)
63-34334	Thorpe	Water right is active when USBR plus IDFG diversions are less than the flow in the Boise River.	N (On Hold)
63-147B	Surprise Valley / Micron	Water right is active from October 16 to November 15 when flow in Boise River is greater than 240 cfs. Water right is active from March 16 to April 15 when flow in Boise River is greater than 1,100 cfs.	Y
63-149	Rossi Mill	Water right is limited to 10 cfs from November 15 to March 1 when the flow in the Boise is less than 240.	N (Wildlife/aesthetic)
63-20041	Boise City Canal	Water right is limited to 1 cfs and 25 af from March 1 to March 31 and November 1 to November 15 when the flow in the Boise River is less than 240 cfs.	N (Shoulder season)
63-12420	Surprise Valley / Micron	Water right is active from June 16 to February 29 when flow in the Boise River is greater than 240 cfs. Water right is active from March 1 to May 31 when flow in the Boise River is greater than 1,100 cfs	Y
63-12399	Surprise Valley / Micron	Water right is active with watermaster authorization. Water right is active from June 16 to February 29 when flow in the Boise River is greater than 240 cfs. Water right is active from March 1 to May 31 when flow in the Boise River is greater than 1,100 cfs	Y
63-31409	Suez	Water right is active with watermaster authorization. Water right is active from June 16 to February 29 when flow in the Boise River is greater than 240 cfs. Water right is active from March 1 to May 31 when flow in the Boise River is greater than 1,100 cfs	Y
63-34348	Elmore County	Water right is active with watermaster authorization. Water right is active from June 16 to February 29 when flow in the Boise River is greater than 240 cfs.	N (On Hold)

Water Right	Point of Diversion	Summary of Conditions Related Flood Control Releases	Implemented in Water Right Accounting
		<p>Water right is active from March 1 to May 31 when flow in the Boise River is greater than 1,100 cfs</p> <p>Water right is active with watermaster authorization.</p> <p>Water Right is active when flow in the Boise River is less than 800 cfs.</p>	

Attachment G – Table Fields and Water Right Order in the Water Right List Input File

Order	Priority Date	Diversion Rate X 1000 (cfs)	Hydro-logic ID	Variable Right Code	Right Type Code	Volume Limit	Start Day Julian	End Day Julian	Note
75	18650601	840	13211725	0	0	0	60	319	
76	18650601	2382	13203527	904	0	0	60	319	Flood Control Condition
77	18650601	336	13212887	0	0	0	60	319	
Break in Table									
374	18650601	210	13211725	0	0	0	60	319	
375	18650601	595	13203527	904	0	0	60	319	Flood Control Condition
376	18650601	84	13212887	0	0	0	60	319	
Break in Table									
630	18650601	350	13211725	0	0	0	60	319	
631	18650601	993	13203527	904	0	0	60	319	Flood Control Condition
632	18650601	140	13212887	0	0	0	60	319	
Break in Table									
934	19861115	560	13212994	0	0	126	60	319	
935	19910222	1000	13189600	900	0	13	0	0	Flood Control Condition
936	19930908	24800	13204200	0	0	0	0	0	
937	19940425	120	13212999	0	0	18	60	319	
938	19970606	3400	13203527	908	0	0	74	319	Flood Control Condition
939	19970606	15000	13203527	908	0	0	0	0	Flood Control Condition
940	19991012	5000	13209990	901	0	0	0	0	Flood Control Condition
941	19991202	110	13203715	902	0	0	0	0	Flood Control Condition
942	20000101	130000000	13194000	0	5	0	0	0	
943	20000102	226886816	13190000	0	6	0	0	0	
944	20000103	133284600	13201500	0	7	0	0	0	
945	20000104	20000000	13190000	0	8	0	0	0	
946	20011116	20000	13204200	908	0	0	0	0	Flood Control Condition

Order	Priority Date	Diversion Rate X 1000 (cfs)	Hydro-logic ID	Variable Right Code	Right Type Code	Volume Limit	Start Day Julian	End Day Julian	Note
947	20041208	20500	13212832	903	0	0	319	74	Flood Control Condition
948	20051228	20000	13212832	903	0 1	81.5	319	60	Flood Control Condition
949	19730316	133284600	13201500	0	10	0	158	191	Refill 2
950	19820708	440	13206274	0	0	49.5	74	319	
951	19850809	450	13199924	0	0 2	2.8	0	0	
952	19860319	5290	13206096	0	0	40.9	0	0	
953	19891102	70	13189600	0	0	13.9	0	0	
954	19650930	133284600	13201500	0	9	0	0	0	Refill 1

**Appendix D SUEZ'S COMMENTS IN RESPONSE TO *ANDERS MEMO* (3/23/2020)
("SUEZ'S COMMENTS")**

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March 23, 2020

Via U.S. mail and email

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Re: SUEZ Water Idaho Inc.'s comments regarding proposed accounting system
updates to implement Refill settlement

Dear Mr. Anders:

This firm represents SUEZ Water Idaho Inc. ("SUEZ"). This letter contains SUEZ's comments to your 2/27/2020 memorandum concerning "Implementation of the Refill Stipulated Agreement in the Boise Water Right Accounting" ("*Anders Memo*").

Before proceeding with the details of SUEZ's comments, we first would like to commend the Department for what evidently was a deeply considered "hard look" as to how to update its water rights accounting system to implement the various provisions of the Refill stipulation. Please take our comments in the constructive spirit that they are intended.

I. *CRESTO MEMO AND CRESTO POWERPOINT*

Given the complexity of the accounting process, the *Anders Memo* is a relatively lean guidance document. We have reviewed the *Anders Memo* in conjunction with (1) the 11/4/2014 memo from Liz Cresto to Gary Spackman, entitled "Accounting for the distribution of water to

federal on-stream reservoirs in Water District 63” (“*Cresto Memo*”) and (2) the 2/26/2013 PowerPoint prepared by Ms. Cresto entitled “Boise River Accounting” (“*Cresto PowerPoint*”). Both were prepared in the context of the contested case that was at the center of the Refill Litigation.

Our understanding is that Ms. Cresto’s explanation of IDWR’s accounting system and the Water District 63 Boise River Water Rights Flow Accounting Reports (the so-called “Green Sheets”) continues to provide useful and valid background information. In other words, the *Cresto Memo* and *Cresto PowerPoint* remain accurate, except in those respects identified in the *Anders Memo* that the accounting system is being modified to implement the Refill Stipulation (e.g., adding the Refill 1 and Refill 2 water rights to RTS).

Please advise whether our understandings are correct.

II. GREEN SHEETS

The *Cresto PowerPoint* contains a helpful explanation of the Green Sheets, which we understand continue to serve as the official output from the accounting system. In our view, it is not possible to understand the accounting system—or the current changes to it—without understanding the Green Sheets.

As helpful as the *Cresto PowerPoint* is, it is no more than a brief overview. We are aware of no IDWR guidance that defines and explains each column or how the columns interact mathematically. After much trial and error, we believe we have a basic understanding of the math. Nevertheless, official Department guidance on each component of the accounting system would be helpful.

Our assumptions are as follows:

NATURAL FLOW	This is the arithmetic sum of REACH GAIN for this reach and all upstream reaches. In other words, it is the amount of water that would have been in a given reach on a given day had there been no reservoirs and no diversions, except that return flows are included.
ACTUAL FLOW	This is an actual or estimated measurement of the physical flow exiting the reach.
RMAINING NAT FLOW	This is NATURAL FLOW minus “all NATURAL FLOW DIV in this reach and upstream” minus OPERATN FLOW. That is, it is the amount of calculated NATURAL FLOW leaving the reach, less all upstream and in-reach diversions to natural flow rights, with a downward adjustment (that we do not fully understand) for OPERATN FLOW.
OPERATN FLOW	We do not fully understand what this is. Apparently it is water that is physically in the reach, but unavailable for diversion. Perhaps this is because it is Idaho Fish and Game or federal “streamflow maintenance”.
STORED FLOW	All storage release water from on-stream reservoirs within the reach. This includes water released to serve spaceholders as well as water released or bypassed for flood control.
RESRVOIR EVAP	A calculated number for evaporation from any on-stream reservoir within the reach.

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NATURAL FLOW DIV	The sum of all diversions out of the river within the reach that are allocated by the accounting system to a natural flow water right. This excludes any "diversions to storage" (i.e., it includes neither physical storage nor paper accrual to storage rights for on-stream reservoirs).
TOTAL RCH DIV	NATURAL FLOW DIV, plus out-of-river diversions within the reach that are attributed to storage accounts.
REACH GAIN	A calculated number, based on the "reach gain equation" reflecting the net external gains and losses to the reach (i.e., tributary inflow and contribution to or from the underlying aquifer).

We would appreciate confirmation that the definitions above are consistent with the Department's accounting program.

These assumptions appear to match the "math" displayed in the sample Green Sheet for 8/27/2012 provided in the *Cresto PowerPoint*. In the spreadsheet below, Columns A through J are lifted from the Green Sheet. We added columns K through P in order to confirm our understanding of the math behind RMAINING NAT FLOW and ACTUAL FLOW. The "Double Check" columns (N and P) show that the math works (within what we assume is round-off error).

Taken from Green Sheets (2/27/2012) - Cresto PowerPoint										Given Parsley computations							
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P		
Reach	NATURAL FLOW	ACTUAL FLOW	RMAINING NAT FLOW	OPERATN FLOW	STORED FLOW	RESERVOIR EVAP	NATURAL FLOW DIV	TOTAL RCH DIV	REACH GAIN	NATURAL FLOW entering this reach	All NATURAL FLOW DIV in this reach and upstream	NATURAL FLOW minus all NATURAL FLOW DIV in this reach and upstream	Double check Compare to RMAINING NAT FLOW	NATURAL FLOW entering this reach + REACH GAIN	Double check Compare to ACTUAL FLOW		
1	384	384	384	0	0	0	0	0	384	0	0	384	0	384	0		
2	236	236	236	0	0	0	0	0	236	0	0	236	0	236	0		
3	394	1,830	394	0	1,436	18	0	0	158	236	0	394	0	1,830	0		
4	774	3,953	774	0	3,179	7	0	0	-4	778	0	774	0	3,953	0		
5	20	15	20	0	-1	0	0	1	20	0	0	20	0	15	0		
6	806	3,846	806	0	3,040	14	0	0	13	793	0	806	0	3,846	0		
7	807	1,591	780	0	811	0	27	2,255	1	806	27	780	0	1,591	0		
8	807	1,883	637	0	446	0	143	508	0	807	170	637	0	1,883	0		
9	806	717	459	0	258	0	176	364	-1	807	346	460	1	718	1		
10	957	254	0	250	4	0	361	614	151	806	707	0	0	254	0		
11	1,639	384	352	50	-18	0	529	552	682	957	1,236	353	1	385	1		
12	1,840	433	463	50	-80	0	111	172	223	1,639	1,347	463	0	433	0		
13	2,371	721	905	0	-184	0	119	234	511	1,840	1,466	905	0	721	0		
							1,466	4,690	2,372								

In order to get the table to run, we added a new Column K, which displays the incoming NATURAL FLOW entering the reach. This was derived from the geographic layout of tributaries set out in section III on page 4 ("River Reaches").

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Next we created a new column L, which displays the sum of all NATURAL FLOW DIV in the current reach and all reaches upstream.

Columns K and L were then used as inputs to check the math for RMAINING NAT FLOW and ACTUAL FLOW.

If the Department concurs in the above, it may wish to consider providing a similar explanation in subsequent memos. Without it, the Green Sheets are difficult to decipher.

III. RIVER REACHES

As we understand it, there are 13 river reaches in the accounting program.

In order to understand (and track the math) in the Green Sheets, it is necessary to understand how they fit together.

Three reaches (Reach 1, Reach 2, and Reach 5) are headwater reaches. Reach 2 feeds Reach 3. Reach 1 and Reach 3 combine to feed Reach 4. Reach 4 and Reach 5 combine to feed Reach 6. From Reach 6 downstream, it is a purely linear system (*i.e.*, Reach 6 feeds Reach 7, Reach 7 feeds Reach 8, and so on).

If this is correct, it would be helpful to add this to the next iteration of guidance since it is not explained in either *Anders Memo* or the *Cresto Memo*, and must be determined from review of external maps.

IV. REACH GAINS

The reach gain calculation is set out on page 1 of the *Anders Memo* and page 3 of the *Cresto Memo*:

Reach Gain = Outflow – Inflow + Σ (Diversions) + Δ Reservoir Content + Reservoir Evaporation

The following is our understanding of the reach gain calculation:

- Outflow and Inflow are measured (or estimated) physical flow measurements at each end of the reach.
- For the three “headwater” reaches (Reaches 1, 2, and 5), Inflow is zero; the only measurement is Outflow, which is why Natural Flow in these reaches equals the Reach Gain in the Green Sheets.

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- “Sum of diversions” includes only diversions out of the river within that reach. Sum of diversions does not include any “diversions to storage.” That is, it includes neither physical storage nor paper accrual to storage rights.
- As for “change in reservoir content,” the direction of the change is not specified in the *Anders Memo* or the *Cresto Memo*. To make the mass balance formula work, a reservoir release (a reduction in reservoir content) would need to be expressed as a negative number, while diversions and evaporation are positive numbers.

As we understand it, the reach gain calculation is a simple mass balance calculation. Explained in prose, this formula does this:

Any difference between outflow and inflow for a given river reach may be attributed to (1) diversions within the reach, (2) change in reservoir levels (*i.e.*, storage or release of stored water) within the reach, and/or (3) evaporation of reservoirs within the reach. If the net effect of those three items does not match the difference between outflow and inflow, then the difference is reach gain (if a positive number) or reach loss (if a negative number).

In other words, reach gain (or reach loss, if a negative number) reflects the net sum of all external inputs to and outputs from the river within the reach, notably, tributary inflow and gain or loss to the underlying aquifer. These gains or losses include both those occurring naturally (through precipitation, snowmelt, etc.) and those resulting from return flow of diverted water rights. Reach gain excludes changes in flow resulting from reservoir operations, reservoir evaporation, or diversions out of the river.

Reach gains for each of the 13 river reaches in Basin 63 are calculated on a daily basis.

Please identify and explain any errors we have made in the assumptions and conclusions we have set out above.

V. NATURAL FLOW

On any given day, the “natural flow” for any given river reach is the simple arithmetic sum of reach gains for that reach plus each upstream reach. In other words, “natural flow,” as used in this context, is the amount of water that would have been in a given reach on a given day had there been no reservoirs and no diversions, except that return flows from water right diversions are included.

The fact that “natural flow” does not reflect the reduction caused by upstream diversions was initially counter-intuitive for us, because the *Anders Memo* speaks in terms the amount of water “available” to satisfy water rights in each reach of the river. Obviously, it is not available if it has been diverted upstream.

Upon reflection, we now understand that natural flow, as the term is used in the accounting system, is not the quantity of water physically available to divert in a given reach. Rather, it is a calculated number for the amount that, in theory, would be available if there were no diversions or reservoir operations.

Thus, the key goal of the accounting system is to allocate—on a daily, after-the-fact basis for each water right diversion (including diversions to storage) in each river reach—each such diversion to a specific natural flow or storage right, or deem it to be a diversion from released storage. The calculated natural flow is the upper limit for how much water may be allocated to all natural flow water rights (including diversion to storage rights).

Please identify and explain any errors we have made in the assumptions and conclusions we have set out above.

VI. FLOW VS. VOLUME

The *Anders Memo* at page 1 says that natural flow is expressed in cfs. We presume that this reflects the fact that the gaging stations (and, we assume, many diversions) measure flow, not volume.

Of course, it is easy to convert cfs to acre-feet (AF) over a day. We assume that the reach gain formula incorporates this conversion for the “Change in Reservoir Content” and “Reservoir Evaporation” variables.

Likewise, we assume the Green Sheets incorporate this conversion for data related to storage (e.g., “RESERVOIR EVAP”).

VII. TREATMENT OF RETURN FLOW AND HYDROPOWER RIGHTS

As we understand the reach gain calculation, return flows add to the reach gain as they re-enter the river below the point where the water originally was diverted. Thus, they are treated as “natural flow” that may be allocated to natural flow water rights when that water is diverted again downstream.

In other words, except for stored water, the accounting program does not ask where the water came from. It treats a tributary, drain or aquifer delivering “natural” water the same as a tributary, drain, or aquifer delivering return flow back to the river.

The key point here is that water may be diverted upstream, charged to a natural flow water right, return to the river (at least in part), be diverted again, and charged to a new water right.

We have no disagreement with this. This is how it should be. We would appreciate having our understanding of this confirmed.

We don't know how the accounting system handles hydropower rights, which are non-consumptive. But that would seem to be another example of how water can "fill" one water right, and continue on to "fill" other rights downstream.

VIII. TREATMENT OF STORAGE WATER

We turn now to how the accounting system handles storage water.

As we understand the accounting program, it treats storage releases differently than it treats natural flow. Storage releases (or "STORED FLOW" as labeled on the Green Sheets) do not contribute to reach gain (under the reach gain calculation).

Because it is not included in reach gain, released storage water is not treated as natural flow water regardless of whether that water is released to supply downstream spaceholders or "passed through" or released during flood control operations. Indeed, the Green Sheets show that during some high flow spring periods, diversions downstream of Lucky Peak Dam are charged to storage, despite the fact that there is ample water in the river for all users. This seems counter-intuitive. If there is plenty of water available due to reservoir evacuation, shouldn't water users be able to divert it under their natural flow rights instead of being charged storage?

Obviously, water released to supply downstream spaceholders is not "natural flow." But it is less obvious that "passed through" water should not be considered "natural flow" available to downstream users (it is, in fact, water that would be present in the river if the reservoirs did not exist). We believe the answer lies in the priority of the reservoir's water rights—when they are in priority, the accounting system accrues natural flow to those rights even if water is not physically stored (*i.e.*, even if it is "passed through"), thus making that natural flow unavailable in the accounting system to supply other rights downstream. In short, even though this water is available to for diversion, the accounting system does not treat it as "natural flow" available for diversion because the water accrued to the reservoir's rights.

Whatever the reasons why water accruing to the reservoir rights is not stored, one would think that stored water that is released solely for flood control would be available for diversion by downstream natural flow rights. Indeed, wasn't that the original concept behind the "on flood release" condition? Yet, as we understand it, the accounting system will allocate such diversions to storage if the water user's natural flow right is not then in priority (and, typically, they won't

be in priority so long as the reservoir rights are in priority). In other words, it appears that the accounting system does not allow a downstream junior to divert under their natural flow when the river is "on flood release," and instead charges that diversion to storage. This may be "fixed" later through "storage cancellation" or some other mechanism, or it may not. But SUEZ does not understand why it should not always be able to divert any water physically in the river under its natural flow rights when there is ample water in the river due to a flood release.

In any event, as you can see, this is an issue that is difficult to understand. Further guidance and explanation from the Department would be welcomed.

IX. THE RTS

- a) Please provide a more thorough explanation of the RTS, particularly with respect to how the Department determines the "Order" in which water rights are listed in the RTS.
- b) Please describe all of the factors that affect the order of each water right in the RTS, including the four rights identified as "Order" nos. 950, 951, 952, and 953 in the portion of RTS included in Attachment G.
- c) Please make the entire RTS file(s) available for review by all water users.
- d) Please confirm there is only one RTS for all of Water District 63 that includes all river reaches, and not separate RTS files for separate reaches.
- e) Please confirm that the accounting system accrues water to specific storage water rights held by the Bureau of Reclamation, as opposed to individual storage contract accounts.
- f) Please let us know what "RTS" stands for.
- g) Please confirm that the RTS is not a new concept. *I.e.*, it has long been a part of the accounting system. The only change here is to add new water rights (*e.g.*, Refill 1 and Refill 2) into the RTS.

X. SIMULTANEOUS ACCRUAL OR REFILL 1 AND REFILL 2

Please confirm that the accounting system does not allow Refill 1 and Refill 2 to both accrue water at the same time, which would clarify the following statement on page 4 of the

Matt Anders
March 23, 2020
Page 9 of 12

Anders Memo: "When the Refill 1 and 2 water rights are in priority they accrue all available natural flow at Lucky Peak Dam."

XI. FLOW THROUGH OF REFILL 1 AND REFILL 2

Page 4 of the *Anders Memo* states:

It will often be the case that water accrued to the refill water rights will physically flow through or be released from the reservoirs during times of accrual. As a result, accruals to the refill water rights will reduce the remaining natural flow available to satisfy water rights in reaches downstream of Lucky Peak Reservoir and increase the stored flow in the reaches downstream of Lucky Peak Reservoir. The only natural flow available to satisfy junior water rights in reaches downstream of Lucky Peak Reservoir is the reach gains from those reaches. The addition of the Refill 1 and 2 water rights does not change the amount of water in the Middleton reach available for appropriation. The stored flow in the Middleton reach in excess of deliveries to existing water right holders is considered unused water leaving the system that is available for appropriation.

Concerning these statements, please answer the following questions:

- a) Why will water accruing to Refill 2 physically flow through or be released from the reservoirs? It makes sense that this would happen with Refill 1 since it is the last right on the RTS (meaning all other rights are satisfied) and it is intended to essentially allow, but not require, physical storage of any flows not accruing to other rights. But Refill 2 has the "on/off switch" so, while it sometimes may be the case that water accruing to Refill 2 is not actually captured (for example, while the federal government is actively managing flood control releases on a day-to-day or hour-to-hour basis), it would seem that most often the intent would be to actually capture the water accruing to the Refill 2 right when it is "turned on."
- b) If water is not physically stored when water is accruing to the Refill 1 and 2 rights, the *Anders Memo* states that accruals to those rights will "increase the stored flow in the reaches downstream of Lucky Peak Reservoir." We understand that the term "stored flow" is a reference to the Green Sheets "STORED FLOW" field. Please confirm. Assuming that is the case, then it makes sense that, in the accounting system, any water accruing to the Refill 1 and 2 rights will reduce the remaining natural flow available to satisfy other

water rights and increase the “STORED FLOW” in a reach. If that is not the case, please explain what

- c) Please confirm that the following statement assumes that the Refill 1 or 2 water rights are accruing water in priority: “The only natural flow available to satisfy junior water rights in reaches downstream of Lucky Peak Reservoir is the reach gains from those reaches.”
- d) Please confirm that this statement is not correct: “The addition of the Refill 1 and 2 water rights does not change the amount of water in the Middleton reach available for appropriation.” The Refill 1 and 2 rights accrue all natural flow at Lucky Peak Dam when they are exercised in priority.¹ In their absence, water flowing into Lucky Peak in excess of all other water rights is unappropriated. Thus, absent Refill 1 or 2, this unappropriated water is available for appropriation downstream of Lucky Peak because there is no authority to capture it in Lucky Peak. To the extent this unappropriated water is not appropriated upstream of the Middleton reach, it is additional water available for appropriation in the Middleton reach. It follows, therefore, that the addition (and exercise) of the Refill 1 and 2 rights does change the amount of water in the Middleton Reach available for appropriation.
- e) Why does this sentence begin with the words “the stored flow”: “The stored flow in the Middleton reach in excess of deliveries to existing water right holders is considered unused water leaving the system that is available for appropriation.” It seems that this sentence should instead refer to “natural flow” to be consistent with the statement on page 2 of the *Anders Memo* that “Any remaining natural flow in the Middleton reach of the river is considered unused water leaving the system that is available for appropriation.”

XII. MATERIAL MODIFICATIONS

Concerning the “material modifications” to the accounting system requiring notice under the Refill Stipulation’s paragraph 17:

¹ The *Anders Memo* later states that because “the refill water rights do not have diversion rate limits . . . their addition to the water right accounting causes the remaining natural flow in the Middleton reach to equal zero cfs anytime natural flow demand below Lucky Peak Reservoir exceeds the reach gains below Lucky Peak Reservoir.” *Anders Memo* at 4. This seems correct, and inconsistent with the statement addressed in the main text that “The addition of the Refill 1 and 2 water rights does not change the amount of water in the Middleton reach available for appropriation.” *Id.*

- a) Because the order of rights on the RTS materially affects how water accrues to other rights, IDWR should consider the addition of water rights to the RTS or changes to the order of any rights on the RTS to be a "material modification" of the accounting system that requires notice under the Refill Stipulation's paragraph 17.
- b) The Department should provide all water users with specific notice of future material modifications to the accounting system under the Refill Stipulation's paragraph 17.

XIII. ATTACHMENT C

Please provide further explanation about how the accounting system code in Attachment C "determines if the specific condition(s) on the water right related to flood control releases have been met." *Anders Memo* at 6.

XIV. TESTING

Concerning the testing of the accounting system updates described on page 7 of the *Anders Memo*:

- a) Please provide further explanation about the 30 acre-foot discrepancy at the Surprise Valley/Micron diversion discovered when testing the accounting system updates (*Anders Memo* at 7), including information about the specific water rights and conditions involved.
- b) So SUEZ can confirm that its water right no. 63-31409 was not exercised or never came into priority in 2017 and 2018, please provide data supporting the statement that "no water rights with limiting flood control conditions were affected [during the test] because, again the water rights were either not exercised, or they never came into priority." *Anders Memo* at 7.
- c) Please provide further explanation and all data used to support the conclusion that "[t]he testing results allow IDWR to conclude the updated water right accounting is functioning as intended." *Anders Memo* at 7.

XV. ATTACHMENTS F AND G

Concerning the *Anders Memo*'s Attachments F and G:

- a) In connection with subpart c) in Section IX above which requests that the entire RTS file(s) is made available for review by all water users, please provide actual water right numbers to identify the water rights in the RTS table (Attachment G contains no actual water right numbers).

Matt Anders
March 23, 2020
Page 12 of 12

- b) Please explain why Attachment F identifies water right no. 63-147B as associated with the Surprise Valley/Micron diversion, but that right does not appear to be listed in Attachment G.
- c) Please explain why Attachment F lists three rights as associated with the Surprise Valley/Micron diversion, but Attachment G shows five rights with Hydrologic ID "13203527"
- d) Please explain why 15 cfs is listed as the diversion rate for the right identified as "Order" no. 939 in Attachment G, since this right appears to be right no. 63-12420 which is authorized to divert 5 cfs.

Thank you for your attention to these matters. We look forward to receiving the Department's response. Please contact us if you have any questions..

Sincerely,



Christopher H. Meyer



Michael P. Lawrence

cc: Garrick Baxter, Deputy Attorney General
Sean Vincent, Hydrology Section Manager

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Appendix E PARTIAL DECREE FOR “REFILL 1” (7/19/2019) (No. 63-33734A)

RECEIVED

JUL 22 2019

DEPARTMENT OF
WATER RESOURCES

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

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

In Re SRBA)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(B) FOR

Water Right 63-33734A

JUL 19 2019

By

Clerk

Deputy Clerk

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 3,672,732.00 AFY

Water right nos. 63-33734A, 63-303, 63-3613, 63-3614, 63-3618, and 63-33734B are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.

PRIORITY DATE: 9/30/1965

This water right is subordinate to all water rights established pursuant to Idaho law for uses within the IDWR Administrative Basin 63, except water rights to store more than 1,000 acre feet of surface water permitted or licensed after April 15, 2019. This water right shall not be administered as subordinate to water rights permitted or licensed for managed ground water recharge after April 15, 2019, or any water rights for the storage or use of water for power purposes.

POINT OF
DIVERSION:

T02N R03E S11 SENE Lot 7 Within Ada County

PURPOSES AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION STORAGE	01/01 12/31	3,672,732.00 AFY
MUNICIPAL/INDUSTRIAL STORAGE	01/01 12/31	3,672,732.00 AFY
STREAMFLOW MAINTENANCE STORAGE	01/01 12/31	3,672,732.00 AFY

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage end uses as provided in the contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

SRBA - PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 63-33734A

Page 1

SUEZ's MEMORANDUM IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT CONCERNING
CONDITION 908 (7/2/2020)

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Page 71 of 168

PLACE OF USE:

Place of use is on those lands identified under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

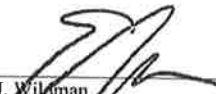
Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this Partial Decree. However, as a matter of Idaho Constitutional and Statutory law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.
2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.
3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.
4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of a final unified decree as it may be amended. Section 42-1412(6), Idaho Code.
5. The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective September 13, 2018, which is incorporated herein by reference.
6. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.
7. Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.
8. This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

RULE 54(b) CERTIFICATION

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Eric J. Wilman
Presiding Judge of the
Snake River Basin Adjudication

Appendix F PARTIAL DECREE FOR "REFILL 2" WITH EXHIBIT A (7/19/2019) (No. 63-33734B)

RECEIVED
JUL 22 2019
DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(B) FOR
Water Right 63-33734B

By _____
Clerk
Deputy Clerk

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 587,056.00 AFY

Water right nos. 63-33734B, 63-303, 63-3613, 63-3614, 63-3618, and 63-33734A, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.

This water right may be exercised only to replace water released for flood control purposes, as determined by the Water District 63 Watermaster, supervised by the Director of the Department of Water Resources. In determining the timing, duration, and magnitude of flood control releases for the purpose of administering this water right and distributing natural flow in accordance with state law, the Watermaster as supervised by the Director will consider, but will not be bound by, the November 20, 1953, "Memorandum of Agreement Between the Department of the Army and the Department of the Interior for Flood Control Operation of Boise River Reservoirs, Idaho" (hereinafter "MOA") and the 1985 "Memorandum of Understanding for Confirmation, Ratification, and Adoption of the Water Control Manual-Boise River Reservoirs, Boise, Idaho" (hereinafter "Manual"). The Watermaster as supervised by the Director may also consider, but will not be bound by, the United States' determinations of the purposes for which water is being released from Lucky Peak Dam. The Watermaster as supervised by the Director may also consider any other information the Director deems relevant.

The Watermaster's determinations, as supervised by the Director, of the timing, duration, and magnitude of flood control releases shall not affect or bind the United States' determinations, authority, or discretion under federal law for purposes of operating its reservoirs for flood control purposes in accordance with the 1946 Flood Control Act, 60 Stat 641, as amended or supplemented, and the MOA and Manual as they may be revised pursuant to the forgoing law.

Water will not accrue towards the satisfaction of this water right until the United States of America, acting through the Bureau of Reclamation, has notified the Water District 63 Watermaster of the calendar date on which it intends to store water pursuant to this water right. Following initial notification, the United States can provide notification directing the Water District 63 Watermaster to stop and start the accrual of water pursuant to this water right, until the water right has been satisfied. All notifications must be made in writing. Each notification must identify the

specific calendar date on which administrative action should occur. The identified calendar date cannot predate the date of the written notification.

PRIORITY DATE: 3/16/1973

POINT OF
DIVERSION: T02N R03E S11 SENE Lot 7 Within Ada County

PURPOSES AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION STORAGE	01/01 7/31	587,056.00 AFY
MUNICIPAL/INDUSTRIAL STORAGE	01/01 7/31	587,056.00 AFY
STREAMFLOW MAINTENANCE STORAGE	01/01 7/31	587,056.00 AFY

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage end uses as provided in contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

PLACE OF USE: Place of use is on those lands identified under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this Partial Decree. However, as a matter of Idaho Constitutional and Statutory law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.
2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.

3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.
4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of a final unified decree as it may be amended. Section 42-1412(6), Idaho Code.
5. This water right is subordinate to the following water rights:
 - a. All surface water rights within IDWR Administrative Basin 63 with a priority date earlier than May 1, 2014, with a decreed or licensed diversion rate of less than 0.1 CFS;
 - b. All water rights listed on attachment A.
6. The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective September 13, 2018, which is incorporated herein by reference.
7. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.
8. Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.
9. This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

RULE 54(b) CERTIFICATION

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



 Eric J. Wildman
 Presiding Judge of the
 Snake River Basin Adjudication

Exhibit A

Subordination Summary - Surface Water Rights - 4/22/18

Row #	WRN	Priority	Right ID	Diversion
1	63-7866	9/12/1973	557848	0.48
2	63-31290A	4/1/1974	572177	0.52
3	63-8004	7/1/1974	596833	0.20
4	63-19543	1/20/1975	554371	0.14
5	63-8199	8/29/1975	557220	0.12
6	63-8380	10/26/1976	556166	0.20
7	63-8393	12/9/1976	556140	0.20
8	63-8647	4/1/1977	555114	0.11
9	63-8960	6/16/1977	556141	0.18
10	63-9433	8/11/1980	556057	0.76
11	63-9438	9/8/1980	56983	0.11
12	63-9642	11/6/1980	577389	0.44
13	63-9688	2/17/1981	557569	0.15
14	63-9684	2/27/1981	557573	0.53
15	63-9699	3/31/1981	556171	0.40
16	63-9683	4/14/1981	557574	0.20
17	63-9942	7/16/1982	557481	0.20
18	63-9982	2/3/1983	57523	0.20
19	63-10111	7/20/1983	57650	0.30
20	63-10254	7/19/1984	57789	0.19
21	63-10279	4/6/1985	556078	0.13
22	63-10324	9/17/1985	657871	0.36
23	63-10325	9/17/1985	657870	0.36
24	63-9750	8/10/1987	556120	1.00
25	63-10560	11/18/1987	16211	0.96
26	63-10776	3/6/1989	89991	0.20
27	63-7226	3/14/1989	54740	0.17
28	63-11619	12/31/1991	59098	0.18
29	63-12567	8/13/1999	547801	0.20
30	63-32016	12/6/2004	592234	1.76
31	63-11439	2/22/1991	667738	1.00
32	63-12055	9/8/1993	36385	24.80
33	63-12399	6/6/1997	672197	3.40
34	63-12420	6/6/1997	671689	5.00
35	63-31409	11/16/2001	559840	20.00
36	63-9346	2/19/1980	638003	0.50
37	63-9944	8/11/1982	600805	1.00
38	63-32537	11/15/1986	607915	0.56
39	63-10810	6/12/1989	15042	4.10
40	63-12113	4/25/1994	613711	0.12
41	63-33905	1/30/2014	671170	0.40
				71.83

Exhibit A

Subordination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
1	63-7754	3/20/1973	55284	0.04
2	63-4284	4/15/1973	53350	0.04
3	63-7792	5/8/1973	55323	0.04
4	63-7794	5/17/1973	553394	0.04
5	63-4766	6/1/1973	53855	0.04
6	63-15335	6/15/1973	377273	0.02
7	63-15406	6/15/1973	377553	0.04
8	63-19090	6/15/1973	373130	0.04
9	63-7824	7/10/1973	55355	0.04
10	63-7822	7/12/1973	55353	0.04
11	63-7826	7/13/1973	378714	0.04
12	63-7835	7/19/1973	372954	0.04
13	63-15123	7/20/1973	378844	0.04
14	63-7807	8/3/1973	555963	0.04
15	63-4563	8/20/1973	53630	0.04
16	63-4571	8/22/1973	53638	0.04
17	63-7781	8/29/1973	557020	0.44
18	63-19423	9/4/1973	373296	0.04
19	63-7856	9/4/1973	55386	0.04
20	63-15129	10/15/1973	378848	0.04
21	63-7901	12/5/1973	55436	0.02
22	63-15069	12/31/1973	376355	0.04
23	63-15421	12/31/1973	377560	0.04
24	63-7943	3/1/1974	55477	0.04
25	63-30441	5/1/1974	145925	0.06
26	63-18966	5/10/1974	379529	0.04
27	63-15279	5/24/1974	377260	0.04
28	63-19269	6/1/1974	344556	0.04
29	63-19270	6/1/1974	344557	0.04
30	63-15431	7/1/1974	368155	0.06
31	63-19052	8/9/1974	553368	0.02
32	63-19053	8/9/1974	406969	0.02
33	63-19054	8/9/1974	406970	0.02
34	63-19614	8/15/1974	373377	0.04
35	63-24097	8/15/1974	141904	0.04
36	63-19896	1/1/1975	379678	0.04
37	63-8067	1/6/1975	660521	5.49
38	63-19484	5/14/1975	373325	0.02
39	63-19142	5/30/1975	373160	0.04
40	63-19333	5/30/1975	406386	0.04
41	63-15420	6/1/1975	377559	0.04
42	63-15303	7/1/1975	319522	0.04
43	63-29396	7/1/1975	406986	0.04

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Row #	WRN	Priority	Right ID	Diversion
44	63-19462	9/1/1975	373314	0.04
45	63-8204	9/7/1975	378726	0.04
46	63-30487	9/16/1975	193220	0.04
47	63-15177	9/26/1975	379891	0.04
48	63-8224	10/20/1975	55760	0.04
49	63-8237	12/4/1975	406437	0.04
50	63-30404	12/31/1975	368271	0.04
51	63-24106	3/6/1976	406312	0.04
52	63-19720	5/1/1976	379590	0.04
53	63-19159	5/24/1976	553853	0.04
54	63-19630	5/29/1976	373985	0.04
55	63-30347	6/1/1976	406329	0.04
56	63-30349	6/1/1976	406331	0.04
57	63-30352	6/1/1976	406333	0.04
58	63-8317	6/1/1976	557570	0.13
59	63-18965	6/8/1976	379528	0.04
60	63-30436	6/15/1976	391930	0.03
61	63-15109	7/1/1976	378832	0.04
62	63-15141	7/1/1976	378857	0.04
63	63-15363	7/1/1976	377539	0.04
64	63-22114	7/1/1976	370819	0.04
65	63-4667	7/1/1976	53749	0.04
66	63-15138	7/10/1976	378854	0.04
67	63-19451	8/6/1976	406300	0.04
68	63-19429	9/10/1976	373297	0.04
69	63-4559	10/30/1976	400345	0.04
70	63-15203	2/1/1977	377233	0.04
71	63-8500	2/25/1977	552831	0.04
72	63-15114	3/1/1977	378835	0.04
73	63-16361	3/2/1977	377449	0.02
74	63-8714	3/11/1977	372956	0.04
75	63-8643	4/1/1977	556062	0.22
76	63-8678	4/7/1977	56217	0.04
77	63-8691	4/20/1977	56230	0.03
78	63-15061	6/1/1977	378800	0.01
79	63-18331	6/1/1977	379453	0.04
80	63-8961	6/13/1977	372958	0.02
81	63-8957	6/15/1977	378736	0.02
82	63-15160	7/1/1977	378869	0.04
83	63-15284	7/1/1977	377261	0.04
84	63-8976	7/11/1977	557482	0.08
85	63-15413	7/15/1977	376356	0.04
86	63-30217	7/20/1977	370830	0.04

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Subordination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
87	63-15081	8/1/1977	378815	0.06
88	63-16175	8/15/1977	377373	0.06
89	63-15128	8/20/1977	376090	0.04
90	63-15189	9/1/1977	377225	0.04
91	63-15118	9/15/1977	378839	0.02
92	63-19694	9/30/1977	379578	0.09
93	63-15066	10/1/1977	378805	0.04
94	63-27142	10/1/1977	141937	0.04
95	63-32439	10/15/1977	604957	0.01
96	63-15403	10/20/1977	377551	0.04
97	63-15404	10/20/1977	377552	0.04
98	63-9061	10/24/1977	552783	0.04
99	63-26301	11/15/1977	406316	0.04
100	63-26830	11/15/1977	406320	0.04
101	63-19306	11/29/1977	406297	0.04
102	63-28349	12/31/1977	376105	0.04
103	63-28504	12/31/1977	126810	0.04
104	63-15147	2/1/1978	378862	0.04
105	63-31106	3/1/1978	568537	0.04
106	63-30216	3/30/1978	368218	0.04
107	63-15068	5/24/1978	378807	0.04
108	63-15119	5/31/1978	378840	0.04
109	63-15102	6/1/1978	396957	0.02
110	63-19229	6/1/1978	373206	0.04
111	63-25728	6/1/1978	406313	0.04
112	63-27063	6/10/1978	145365	0.08
113	63-15394	6/15/1978	376098	0.02
114	63-15314	6/22/1978	377269	0.04
115	63-19160	7/9/1978	553854	0.04
116	63-19063	7/25/1978	406971	0.04
117	63-19440	7/27/1978	373302	0.05
118	63-15096	7/31/1978	378822	0.04
119	63-16034	7/31/1978	377307	0.04
120	63-19232	8/1/1978	373209	0.04
121	63-9169	8/3/1978	378738	0.04
122	63-23396	8/7/1978	141668	0.02
123	63-30439	8/30/1978	396163	0.04
124	63-15104	9/1/1978	378828	0.04
125	63-30150	10/1/1978	368213	0.06
126	63-9189	10/18/1978	404613	0.01
127	63-15146	11/6/1978	378861	0.04
128	63-8384	11/15/1978	556068	0.18
129	63-30363	12/21/1978	368236	0.04

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Row #	WRN	Priority	Right ID	Diversion
130	63-9217	3/7/1979	552860	0.06
131	63-26644	4/15/1979	406319	0.03
132	63-9226	4/16/1979	404615	0.02
133	63-9227	4/16/1979	404616	0.02
134	63-9228	4/16/1979	404617	0.01
135	63-24108	5/3/1979	411185	0.03
136	63-9240	5/23/1979	378742	0.04
137	63-15107	5/29/1979	378830	0.04
138	63-24078	6/12/1979	141897	0.04
139	63-9256	6/22/1979	56798	0.04
140	63-20316	6/30/1979	406415	0.04
141	63-15230	7/1/1979	377243	0.04
142	63-15574	7/1/1979	396959	0.04
143	63-22161	7/1/1979	406308	0.04
144	63-15429	8/1/1979	377562	0.04
145	63-9273	8/6/1979	404618	0.01
146	63-15315	8/16/1979	377270	0.04
147	63-15060	9/14/1979	378799	0.04
148	63-15090	9/15/1979	376088	0.02
149	63-30444	9/17/1979	145443	0.04
150	63-30306	11/1/1979	370831	0.01
151	63-15217	4/1/1980	401352	0.06
152	63-24043	4/8/1980	141886	0.04
153	63-9381	5/19/1980	378746	0.04
154	63-15218	5/20/1980	396958	0.03
155	63-15210	6/1/1980	319515	0.04
156	63-15359	6/1/1980	377538	0.04
157	63-15648	6/1/1980	137945	0.04
158	63-18482	6/1/1980	379471	0.02
159	63-19194	6/1/1980	373184	0.05
160	63-15201	6/5/1980	377231	0.04
161	63-9394	6/10/1980	552824	0.08
162	63-9402	6/12/1980	556045	0.04
163	63-15245	7/1/1980	377249	0.02
164	63-19775	7/1/1980	379617	0.04
165	63-22269	7/1/1980	406975	0.04
166	63-15121	7/10/1980	378842	0.04
167	63-9425	7/29/1980	404620	0.02
168	63-15248	7/30/1980	377250	0.04
169	63-15029	8/7/1980	376085	0.04
170	63-30215	8/26/1980	370826	0.03
171	63-19433	9/24/1980	406298	0.04
172	63-15277	10/1/1980	377259	0.04

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Subordination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
173	63-15288	10/1/1980	377264	0.04
174	63-15808	10/14/1980	372971	0.04
175	63-9651	12/5/1980	553422	0.08
176	63-15619	12/31/1980	376100	0.04
177	63-31457	1/1/1981	558779	0.03
178	63-26144	1/22/1981	406980	0.04
179	63-30329	1/22/1981	406328	0.04
180	63-27340	3/25/1981	139901	0.04
181	63-15135	5/15/1981	376091	0.04
182	63-15932	5/19/1981	406293	0.08
183	63-28747	6/1/1981	368200	0.04
184	63-15228	6/4/1981	377241	0.02
185	63-15354	7/1/1981	377537	0.04
186	63-19491	7/5/1981	373328	0.06
187	63-26175	7/15/1981	406982	0.06
188	63-29959	7/31/1981	376107	0.04
189	63-19705	8/25/1981	379584	0.04
190	63-19076	9/2/1981	373128	0.04
191	63-9821	9/28/1981	378754	0.03
192	63-22836	10/1/1981	160025	0.04
193	63-9748	10/12/1981	556173	0.07
194	63-17396	11/4/1981	379050	0.04
195	63-9900	4/30/1982	552864	0.06
196	63-15287	5/20/1982	377263	0.04
197	63-15072	5/31/1982	376086	0.04
198	63-15105	6/1/1982	378829	0.04
199	63-18484	6/1/1982	376102	0.04
200	63-19477	6/1/1982	406269	0.04
201	63-9924	6/22/1982	57465	0.04
202	63-18964	7/6/1982	379527	0.04
203	63-15034	7/14/1982	406438	0.04
204	63-19268	8/20/1982	406344	0.02
205	63-32240	1/1/1983	604376	0.06
206	63-9974	1/20/1983	560226	0.04
207	63-19455	3/15/1983	373308	0.04
208	63-10011	3/29/1983	372983	0.08
209	63-10045	5/18/1983	372964	0.02
210	63-19449	5/20/1983	550845	0.04
211	63-15510	5/30/1983	376099	0.04
212	63-10068	6/9/1983	404630	0.04
213	63-10080	6/9/1983	404631	0.01
214	63-10135	6/9/1983	404632	0.02
215	63-10148	6/9/1983	404633	0.01

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Row #	WRN	Priority	Right ID	Diversion
216	63-25957	6/13/1983	368190	0.04
217	63-10089	6/15/1983	57629	0.08
218	63-10083	6/21/1983	553418	0.05
219	63-10087	6/21/1983	556089	0.04
220	63-10082	6/22/1983	57622	0.04
221	63-10192A	6/22/1983	378767	0.04
222	63-10192B	6/22/1983	557578	0.02
223	63-10092	6/23/1983	378763	0.04
224	63-15468	6/25/1983	377566	0.04
225	63-33445	6/28/1983	637243	0.12
226	63-33446	6/28/1983	637244	0.08
227	63-15095	7/1/1983	378821	0.07
228	63-28936	7/21/1983	368202	0.02
229	63-30445	10/10/1983	373846	0.02
230	63-30272	1/1/1984	368234	0.04
231	63-26374	4/30/1984	406318	0.04
232	63-15145	5/17/1984	378860	0.01
233	63-15286	6/1/1984	377262	0.04
234	63-15113	7/1/1984	378834	0.04
235	63-15298	7/1/1984	319128	0.04
236	63-19029	7/1/1984	406295	0.03
237	63-15140	8/5/1984	378856	0.04
238	63-15202	8/20/1984	377232	0.04
239	63-19191	10/2/1984	406296	0.04
240	63-19834	10/23/1984	379644	0.04
241	63-30255	1/1/1985	368232	0.04
242	63-15142	4/30/1985	378858	0.04
243	63-19458	6/1/1985	373310	0.04
244	63-18967	6/15/1985	379530	0.04
245	63-30470	6/30/1985	556467	0.04
246	63-19617	8/1/1985	373378	0.04
247	63-10318	8/9/1985	547746	0.45
248	63-19257	9/1/1985	411084	0.04
249	63-19271	9/15/1985	373226	0.04
250	63-15036	9/23/1985	372968	0.02
251	63-31531	9/25/1985	561550	0.02
252	63-15263	10/16/1985	377257	0.04
253	63-10332	10/25/1985	404634	0.02
254	63-15033	1/1/1986	372967	0.02
255	63-29748	3/31/1986	376106	0.04
256	63-15149	5/5/1986	378864	0.04
257	63-30391	5/10/1986	406988	0.08
258	63-15179	5/31/1986	377222	0.04

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Row #	WRN	Priority	Right ID	Diversion
259	63-15790	6/1/1986	376848	0.04
260	63-19741	6/16/1986	379604	0.02
261	63-18858	6/27/1986	379512	0.04
262	63-18969	8/6/1986	144413	0.04
263	63-30442	8/6/1986	396219	0.04
264	63-15633	11/1/1986	380085	0.02
265	63-10457	3/24/1987	552894	0.18
266	63-30440	5/11/1987	145921	0.04
267	63-15007	6/1/1987	372965	0.02
268	63-19732	6/1/1987	406305	0.04
269	63-10506	6/16/1987	557478	0.04
270	63-26364	6/19/1987	406317	0.04
271	63-15064	7/1/1987	378803	0.03
272	63-19653	8/17/1987	379553	0.07
273	63-27344	8/19/1987	344373	0.04
274	63-10529	8/24/1987	58066	0.04
275	63-15378	9/10/1987	319558	0.09
276	63-31228	9/10/1987	570110	0.13
277	63-17402	11/12/1987	378589	0.04
278	63-15152	11/17/1987	319378	0.04
279	63-10559	11/18/1987	58094	0.06
280	63-31474	5/31/1988	559221	0.02
281	63-10641	6/17/1988	411503	0.01
282	63-15222	8/1/1988	319114	0.03
283	63-16033	10/7/1988	376101	0.04
284	63-27069	10/8/1988	376103	0.04
285	63-30332	12/1/1988	376109	0.04
286	63-10771	2/23/1989	58289	0.11
287	63-19708	4/1/1989	406303	0.04
288	63-19709	4/1/1989	406304	0.04
289	63-10787	5/1/1989	58305	0.04
290	63-10796	5/12/1989	556013	0.07
291	63-10800	5/19/1989	58317	0.04
292	63-10797	5/23/1989	101360	0.08
293	63-26300	6/26/1989	406983	0.03
294	63-19728	9/1/1989	379598	0.04
295	63-11013	9/27/1989	555411	0.03
296	63-9171	10/6/1989	56709	0.22
297	63-11070	10/16/1989	550744	0.13
298	63-11078	11/14/1989	98741	0.06
299	63-11083	11/24/1989	58572	0.04
300	63-11079	11/29/1989	58569	0.04
301	63-11080	11/29/1989	58570	0.02

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Row #	WRN	Priority	Right ID	Diversion
302	63-11061	12/5/1989	101743	0.04
303	63-11513	3/14/1991	594903	9.68
304	63-11514	5/10/1991	594912	9.68
305	63-30359	7/26/1991	406487	0.07
306	63-29419	8/19/1991	406321	0.06
307	63-11596	10/9/1991	17450	0.04
308	63-11637	2/5/1992	7803	0.05
309	63-10802	4/21/1992	103333	0.38
310	63-31468	6/11/1992	559146	0.02
311	63-30341	6/29/1992	406483	0.07
312	63-11936	9/21/1992	97295	0.04
313	63-11957	9/29/1992	102074	0.02
314	63-11943	10/15/1992	4346	0.15
315	63-11958	10/16/1992	102077	0.04
316	63-29443	6/1/1993	368203	0.04
317	63-12041	7/31/1993	671226	0.09
318	63-30086	8/14/1993	368210	0.04
319	63-12059	9/28/1993	103377	0.12
320	63-30371	6/23/1994	376110	0.01
321	63-12128	7/27/1994	103145	0.04
322	63-12146	9/20/1994	611488	0.04
323	63-12153	11/10/1994	620453	0.40
324	63-32239	11/14/1994	604375	0.06
325	63-30190	12/5/1994	370823	0.06
326	63-30365	6/3/1995	368237	0.04
327	63-30364	9/7/1995	369762	0.04
328	63-12317	2/6/1996	663368	0.10
329	63-30369	3/14/1996	368239	0.04
330	63-31285	4/8/1996	557504	0.04
331	63-30370	4/10/1996	369763	0.04
332	63-12350	8/1/1996	103326	0.04
333	63-33044	9/15/1996	621257	0.04
334	63-30421	10/13/1996	406337	0.04
335	63-12537	7/7/1999	630730	0.14
336	63-12558	12/9/1999	551761	0.03
337	63-12608	11/27/2000	658112	0.11
338	63-31218	3/23/2001	556578	0.14
339	63-31311	8/27/2001	559183	0.04
340	63-31503	5/28/2002	657845	0.04
341	63-12507	8/2/2004	110175	0.08
342	63-32180	3/3/2005	596264	0.15
343	63-32393	3/2/2006	627706	0.04
344	63-32945	11/27/2007	630788	0.12

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Row #	WRN	Priority	Right ID	Diversion
345	63-33933	9/25/2008	671262	0.02
346	63-33321	12/21/2008	649729	0.06
347	63-33379	5/17/2010	639436	0.04
348	63-33532	6/13/2011	651391	0.09
349	63-33677	7/30/2012	669655	0.04
350	63-33800	6/26/2013	671975	0.04
351	63-33888	1/3/2014	671931	0.67
				42.65

Appendix G *REFILL SETTLEMENT STIPULATION (7/2/2018)*

STIPULATION

This Stipulation is made and entered into among the parties to Snake River Basin Adjudication ("SRBA") subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, 63-33738, and the parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 (collectively, "Parties").¹ The Parties, by and through their counsel of record, hereby stipulate and agree as follows:

1. The purpose of this Stipulation is to facilitate and expedite resolution of all disputes among the Parties that have arisen in various judicial and administrative proceedings pertaining to issues of the "fill" and/or "refill" of the storage water rights for on-stream reservoirs in Idaho Department of Water Resources ("Department" or "IDWR") Administrative Basin 63, known as Arrowrock, Anderson Ranch and Lucky Peak Reservoirs ("Boise River Reservoirs"), including but not limited to: SRBA subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; and the administrative and judicial proceedings underlying these same appeals and cross-appeals.

2. The parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 stipulate and agree to jointly support passage of legislation during the 2019 Regular Legislative Session for the purpose of statutorily supporting

¹ The Director of the Idaho Department of Water Resources ("Director") and the Idaho Department of Water Resources ("Department" or "IDWR") are not "parties" to the SRBA, but are parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017. The Director is included, acting for the Department, as a bound signatory to this Stipulation because the Director is vested with the direction and control of the distribution of water from all natural water sources within a water district pursuant to Idaho Code § 42-602, and is a party to the referenced appeals and cross-appeals.

the “Enactment Remark” set forth in paragraph 3 below. The parties to the appeals and cross appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 agree to support consideration by the Idaho legislature of the proposed legislation in **Attachment A** attached hereto with only those changes to which all Parties have expressly consented in writing.²

3. If the proposed legislation referenced above in paragraph 2 becomes law on or before the adjournment of the 2019 Regular Legislative Session, and with only those changes to which all Parties have expressly consented in writing, the Parties stipulate and agree the remark in the “Priority Date” element of water right no. 63-33734A shall be as follows (the “Enactment Remark”):

This water right is subordinate to all water rights established pursuant to Idaho law for uses within the IDWR Administrative Basin 63, except water rights to store more than 1,000 acre feet of surface water permitted or licensed after April 15, 2019. This water right shall not be administered as subordinate to water rights permitted or licensed for managed ground water recharge after April 15, 2019 or any water rights for the storage or use of water for power purposes.

Alternatively, if the legislation in **Attachment A** does not become law on or before the adjournment of the 2019 Regular Legislative Session, the Parties stipulate and agree the remark in the “Priority Date” element of water right no. 63-33734A shall be as follows (the “Non-Enactment Remark”):

This water right is subordinate to all water rights established pursuant to Idaho law for uses within the IDWR Administrative Basin 63. This water right shall not be administered as subordinate to water rights permitted or licensed for managed ground water recharge after April 15, 2019 or any water rights for the storage or use of water for power purposes.

4. The Parties stipulate and agree that these alternative remarks are set forth in the

² As set forth in paragraphs 3, 4, 5, 6, and 7 of this Stipulation, the Parties have stipulated and agreed to two alternative remarks for the “Priority Date” element of water right no. 63-33734A. The Parties have further stipulated and agreed that the remark to be decreed depends on whether the proposed legislation set forth in **Attachment A** becomes law on or before the adjournment of the 2019 Regular Legislative Session, and with only those changes to which all Parties have expressly consented in writing. The two alternative forms of the partial decree for water right no. 63-33734A are included in **Attachment B** and **Attachment C**. The Parties have further stipulated and agreed that water right no. 63-33734B should be decreed in the form included in **Attachment D** regardless of whether the proposed legislation is approved.

“Enactment Remark” version and “Non-Enactment Remark” version of the two alternative partial decrees for water right no. 63-33734A, which are included in **Attachment B** and **Attachment C**.

5. The Parties stipulate and agree that they will support issuance of the “Enactment Remark” version of the partial decree for water right no. 63-33734A if the proposed legislation in **Attachment A** becomes law on or before the adjournment of the 2019 Regular Legislative Session, and with only those changes to which all Parties have expressly consented in writing. The Parties stipulate and agree that they will support issuance of the “Non-Enactment Remark” version of the partial decree for water right no. 63-33734A if the proposed legislation in **Attachment A** does not become law on or before the adjournment of the 2019 Regular Legislative Session.

6. The Parties stipulate and agree that they will support issuance of the proposed partial decree for water right no. 63-33734B included in **Attachment D**, and that the partial decree for water right no. 63-33734B is not dependent upon legislative action.

7. The Parties further stipulate and agree to the following:

- a. No more than seven (7) days after formal execution of this Stipulation by all Parties except the United States,³ the parties to the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 will file with the Idaho Supreme Court joint motions of the form attached hereto in **Attachment E** that request re-scheduling oral argument of the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 for the first oral argument setting available after November 30, 2019.
- b. Within seven (7) days after adjournment of the 2019 Regular Legislative Session or the

³ The United States has informally expressed that it has no objection to the Stipulation, but may not formally execute the Stipulation without authorization from the U.S. Department of Justice.

STIPULATION
Page 3

legislation attached hereto as Attachment A becoming law, and with only those changes to which all Parties have expressly consented in writing, whichever occurs first, the State of Idaho will file in the SRBA “main case” no. 39576 the following motions, which all Parties stipulate and agree to support as a full and final resolution of SRBA water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738⁴:

- i. a motion to decree water right no. 63-33734B and to decree as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738 of the form set forth in **Attachment D**; and
- ii. a motion to alter or amend the partial decrees for water rights nos. 63-303, 63-3613, 63-3614, and 63-3618 of the form set forth in **Attachment F**, requesting that the partial decrees be modified to include in their “Quantity” elements the following combined volume limit condition, and in their “Other Provisions” elements the following “reset” condition:
 - a. Combined Volume Limit Condition: Water rights nos. 63-303, 63-3613, 63-3614, 63-3618, 63-33734A, and 63-33734B, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.
 - b. Reset Condition: The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided, however, the annual time period will begin (1) after the day of allocation and when there is no natural flow

⁴ A copy of this Stipulation (including the Attachments) will be appended to the motions to be filed in the SRBA.

available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier; and

- iii. a motion to decree water right no. 63-33734A, of the form set forth in either **Attachment B** or **Attachment C**, depending on whether the proposed legislation set forth in **Attachment A** becomes law on or before the adjournment of the 2019 Regular Legislative Session, and with only those changes to which all Parties have expressly consented in writing:
 - a. if the proposed legislation set forth in **Attachment A** becomes law on or before the adjournment of the 2019 Regular Legislative Session, and with only such changes to which the Parties have expressly consented in writing, then the State will file and the Parties will support a motion to decree water right no. 63-33734A of the form set forth in **Attachment B**;
 - b. alternatively, if the proposed legislation set forth in **Attachment A** does not become law on or before the adjournment of the 2019 Regular Legislative Session, and with only such changes to which the Parties have expressly consented in writing, then the State will file and the Parties will support a motion to decree water right no. 63-33734A of the form set forth in **Attachment C**.

8. In supporting the issuance of the partial decree for water right no. 63-33734B as set forth in **Attachment D**, the Parties agree the annual volume defined in the quantity element of that partial decree does not constitute an admission by any Party or a finding by the Court of the number of acres entitled to receive storage water from the Boise River Reservoirs.

STIPULATION
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9. The Parties stipulate and agree that they will not seek any changes in the proposed partial decrees included in **Attachments B, C, or D**, or the proposed legislation set forth in **Attachment A**, without having first obtained the express written consent of all the Parties to the change(s) sought.

10. The Parties stipulate and agree that they will not object to or appeal the SRBA Court's issuance of partial decrees for water right nos. 63-33734A and 63-33734B that are materially consistent with the motions filed pursuant to paragraph 7.b.i and 7.b.iii above, and any additional or subsequent express written agreement of the Parties.

11. The Parties stipulate and agree that they will not object to or appeal the decrees of disallowance of water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-337378 entered by the SRBA Court in accordance with the motion filed pursuant to paragraph 7.b.i above.

12. The Parties stipulate and agree that they will not object to or appeal the SRBA Court's amendment of the partial decrees for water rights nos. 63-303, 63-3613, 63-3614, and 63-3618 in accordance with the motion filed pursuant to paragraph 7.b.ii above. The Parties also stipulate and agree they will not seek any other amendments of the partial decrees for water rights nos. 63-303, 63-3613, 63-3614, and 63-3618 other than those described above in paragraph 7.b.ii without having first obtained the express written consent of all the Parties to the amendment(s) or change(s) sought.

13. If the SRBA Court issues partial decrees for water right nos. 63-33734A and 63-33734B on or before November 30, 2019 that are materially consistent with the motions filed by the State pursuant to paragraph 7.b.i and 7.b.iii above, the parties to the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 will file with the Idaho Supreme Court, within seven (7) days of the issuance of the partial decrees for water right nos. 63-33734A and 63-33734B, joint motions of the form attached hereto in **Attachment G** that request immediate dismissal of the appeals and cross-appeals pending under Idaho Supreme Court docket

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Page 6

nos. 44677-2016, 44745-2017, and 44746-2017 with instructions to the Twin Falls County District Court to vacate its *Memorandum Decision and Order* (Sep. 1, 2016) and *Order Denying Rehearing* (Nov. 14, 2016), Case no. CV-WA-2015-21376 (Consolidated Ada County Case No. CV-2015-21391).

14. If the SRBA does not issue partial decrees for water right nos. 63-33734A and 63-33734B on or before November 30, 2019 that are materially consistent with the motions filed by the State pursuant to paragraph 7.b.i and 7.b.iii above, this Stipulation will become null and void and no longer binding, with all Parties retaining all of their rights, positions, and arguments with respect to the disputes referenced in paragraph 1 above; with the sole exception that if the SRBA does not issue partial decrees for water right nos. 63-33734A and 63-33734B on or before November 30, 2019 that are materially consistent with the motions filed by the State pursuant to paragraph 7.b.i and 7.b.iii above, the Parties stipulate and agree that oral argument of the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 will occur during the first available setting after November 30, 2019 or such other date previously set by the Idaho Supreme Court, and that none of the Parties may seek suspension, stay, continuance, or dismissal of the appeals, cross-appeals, or oral argument thereon.

15. The Parties stipulate and agree that the Department will continue to account for the distribution of water to water rights in Water District 63 as described in the Director's *Amended Final Order* issued on October 20, 2015, in the Contested Case that was the subject of the judicial review proceedings in Case No. CV-WA-2015-21376 (Consolidated Ada County Case No. CV-WA-2015-21391). The Parties stipulate and agree that they will not challenge or object to the Department's use of the Water District 63 water right accounting system to distribute water to water rights in Water District 63 as described in, and consistent with, the Director's *Amended Final Order*. With the

STIPULATION
Page 7

exception of these limitations, the Parties stipulate and agree that SUEZ Water Idaho Inc. and the irrigation organizations bound by this Stipulation reserve their rights under Idaho law to otherwise challenge or object to the distribution of water to water rights in Water District 63.

16. The Parties stipulate and agree that upon issuance of the partial decrees for water right nos. 63-33734A and 63-33734B, the Department will update the Water District 63 water right accounting system to account for the distribution of water to water right nos. 63-33734A and 63-33734B consistent with their partial decrees. The Department will provide the Parties, the Water District 63 Advisory Committee, the Water District 63 Watermaster, and all water right holders in Water District 63 with notice of, and an opportunity to submit comments on, the proposed updates to the accounting system. Any aggrieved Parties may request a contested case on these matters, but such a contested case will be limited to preclude raising any issues raised or addressed in the Contested Case that was the subject of the judicial review proceedings in Case No. CV-WA-2015-21376 (Consolidated Ada County Case No. CV-WA-2015-21391).

17. For all future material modifications of the Water District 63 water right accounting system IDWR will provide notice and an opportunity to comment on the change(s). Any party aggrieved by the Director's action in making a material modification has the right to request a contested case in accordance with Idaho Code § 42-1701A and the provisions and standards set forth in chapter 52, title 67, Idaho Code.

18. The Parties stipulate and agree that the Department will update the Water District 63 water right accounting system to account for the distribution of water pursuant to conditions on water rights authorizing diversions when the Boise River below Lucky Peak Dam is "on flood release."

19. No provision of this Stipulation shall be construed to modify or require the United States to change the reservoir operating plan as defined in the November 20, 1953 Memorandum of

STIPULATION
Page 8

Agreement Between the Department of the Army and the Department of the Interior for Flood Control Operation of Boise River Reservoirs, Idaho (hereinafter "MOA") and the 1985 Memorandum of Understanding for Confirmation, Ratification, and Adoption of the Water Control Manual—Boise River Reservoirs, Boise, Idaho (hereinafter "Manual"). No provision of this Stipulation shall modify the rights or obligations of the United States or the Arrowrock, Anderson Ranch, and Lucky Peak spaceholders pursuant to the MOA and Manual, federal law or contracts between the United States and the spaceholders. No provision of this Stipulation shall be construed to bind the State of Idaho to the MOA or Manual or to require the Director or the Department to distribute water pursuant to the MOA or Manual.

20. Nothing in this Stipulation or its Attachments limits the Attorney General from developing or providing legal opinions as authorized by Idaho law.

21. Nothing in this Stipulation, including the stipulated entry of partial decrees or other evidence or pleading submitted or relied upon for approval of the Stipulation, or any offers or compromises made in the course of negotiating the Stipulation, shall be construed as admissions against interest or used as evidence to support or oppose any party's claims or objections in the SRBA, in any other water rights adjudication, or in any administrative proceedings before the Department, other than those for interpretation, enforcement or administration of the Stipulation or the partial decrees or for a purpose contemplated by Rule 408.

22. Each of the undersigned represent that they are authorized to execute this Stipulation on behalf of the entity they represent.

23. Nothing in this Stipulation shall be construed as creating liability against the United States, the State of Idaho or any of its agencies for any claims related to or arising from flood control operations.

STIPULATION
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24. This Stipulation may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

25. This Stipulation shall become effective and binding on all Parties except the United States upon execution by all signatories except the United States. This Stipulation shall become effective and binding on the United States upon execution by the United States.

STIPULATION
Page 10

UNITED STATES DEPT. OF JUSTICE

David Gehlert
Attorney for United States
Bureau of Reclamation

Date

STIPULATION
Page 11

BARKER ROSHOLT & SIMPSON LLP


Albert P. Barker Date
Attorney for Boise Project Board of Control.

STIPULATION
Page 12

SAWTOOTH LAW OFFICES, PLLC

Daniel V. Steenson 6-26-18

Daniel V. Steenson

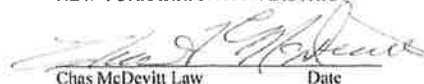
Date

Attorney for Ballentyne Ditch Company; Boise Valley Irrigation Ditch Company; Canyon County Water Company; Eureka Water Company; Farmers' Co-Operative Ditch Company; Middleton Mill Ditch Company; Middleton Irrigation Association, Inc.; Nampa & Meridian Irrigation District; New Dry Creek Ditch Company; Pioneer Ditch Company; Pioneer Irrigation District; Settlers Irrigation District; South Boise Water Company; and Thurman Mill Ditch Company

STIPULATION

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NEW YORK IRRIGATION DISTRICT



Chas McDewitt Law Date
Attorney for New York Irrigation District

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Page 14

GIVENS PURSLEY, LLP

 6/25/18
Christopher H. Meyer Date
Attorney for SUEZ Water Idaho Inc. (formerly United Water Idaho)

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IDAHO ATTORNEY GENERAL'S OFFICE

 7/02/2018

Darrell G. Early Date
Deputy Attorney General
Attorney for State of Idaho

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Page 16

IDAHO DEPARTMENT OF WATER RESOURCES

 6/25/2018

Gary Spackman Date
Director
Idaho Department of Water Resources

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ATTACHMENT A

DRAFT

DRKAG217

LEGISLATURE OF THE STATE OF IDAHO
Sixty-fourth Legislature Second Regular Session - 2018

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO WATER; AMENDING CHAPTER 1, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-115, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL SUBORDINATE PERMITS AND LICENSES FOR CERTAIN PROJECTS ISSUED AFTER A SPECIFIED DATE TO THE CAPTURE AND RETENTION OF WATER IN EXISTING ON-STREAM STORAGE RESERVOIRS DURING AND FOLLOWING FLOOD CONTROL OPERATIONS UNTIL THE DATE OF ALLOCATION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 1, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-115, Idaho Code, and to read as follows:

42-115. STORAGE. To ensure that new or proposed projects to store more than one thousand (1,000) acre feet of surface water do not interfere with the storage of water in existing on-stream storage reservoirs operated for storage and flood control purposes, the director of the department of water resources shall subordinate permits and licenses for projects to store more than one thousand (1,000) acre feet of surface water issued after the effective date of this section to the capture and retention of water in existing on-stream storage reservoirs during and following flood control operations until the date of allocation.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Wednesday May 23, 2018 2:20 PM

DRAFT

DRKAG217

2

WATER - Adds to existing law to provide that the Director of the Department of Water Resources shall subordinate permits and licenses for certain projects issued after a specified date to the capture and retention of water in existing on-stream storage reservoirs during and following flood control operations until the date of allocation.

Wednesday May 23, 2018 2:20 PM

ATTACHMENT B

**STIPULATION ATTACHMENT B – MOTION TO DECREE REFILL
ENACTMENT VERSION**

LAWRENCE G. WASDEN
Attorney General
DARRELL G. EARLY
Deputy Attorney General
Chief, Natural Resources Division
MICHAEL C. ORR (ISB # 6720)
Deputy Attorney General
Natural Resources Division
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Joe R. Williams Building
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P.O. Box 83720
Boise, ID 83720-0010
(208) 334-2400

Attorneys for the State of Idaho

**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

)
)
)
)
)

**MOTION TO DECREE
WATER RIGHT NO. 63-33734A**

MOTION

The State of Idaho (“State”), by and through its attorneys of record, pursuant to Administrative Order 1, the Idaho Rules of Civil Procedure, and the “Stipulation” appended hereto as **Exhibit 1** (“Stipulation”), hereby moves this Court for an order issuing a partial decree for water right no. 63-33734A in the form attached hereto as **Exhibit 2**.

MOTION TO DECREE WATER RIGHT NO. 63-33734A - 1

***STIPULATION ATTACHMENT B – MOTION TO DECREE REFILL
ENACTMENT VERSION***

DISCUSSION

The parties to SRBA subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738, and the parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, have entered into a Stipulation for the purpose of facilitating and expediting resolution of disputes that have arisen in various judicial and administrative proceedings pertaining to issues of the “fill” and/or “refill” of the storage water rights for the on-stream reservoirs in IDWR Administrative Basin 63 (Boise River Basin), including but not limited to: the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; the administrative and judicial proceedings underlying these same appeals and cross-appeals; and Snake River Basin Adjudication (“SRBA”) subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. *See Exhibit 1.*

The parties have agreed to seek issuance in the SRBA of partial decrees for water right nos. 63-33734A and water right no. 63-33734B of the forms proposed by this motion and the concurrently filed motion to decree water right no. 63-33734B.¹ The parties have also agreed to seek orders decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

Under the Stipulation, the form of the proposed partial decree for water right no.

¹ Pursuant to the Stipulation, the State is also filing on this date: (1) a motion for an order issuing a partial decree for water right no. 63-33734B and decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; and (2) a motion to alter or amend the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

**STIPULATION ATTACHMENT B – MOTION TO DECREE REFILL
ENACTMENT VERSION**

63-33734A to be submitted to this Court depended on whether certain legislation was enacted during the 2019 Regular Legislative Session. *See Exhibit 1.* That legislation has been enacted, and the State therefore moves this Court for an order issuing a partial decree for water right no. 63-33734A of the form appended hereto as **Exhibit 2.**

If this Court issues partial decrees for water right nos. 63-33734A and 63-33734B that are materially consistent with the forms of proposed partial decrees appended to the motions filed by the State pursuant to the Stipulation, the parties have agreed to jointly move the Idaho Supreme Court for dismissal of the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, with instructions to this Court to vacate the orders that are the subject of the appeals and cross-appeals. If this Court does not issue partial decrees materially consistent with the partial decrees proposed by the State pursuant to the Stipulation, the parties have agreed the appeals and cross-appeals will proceed to oral argument on the first available date after November 30, 2019. *See Exhibit 1.*²

For this reason, time is of the essence and the State therefore requests expeditious consideration of this motion, so that it can be noticed, any potential objections resolved, and a partial decree issued, no later than November 30, 2019. *See Exhibit 1.* Because this motion is related to the concurrently-filed motions required by the Stipulation,³ all of

² The Idaho Supreme Court has granted motions to suspend the appeals and reschedule oral argument on the appeals and cross-appeals for the first available setting after November 30, 2019.

³ *See supra* note 1.

***STIPULATION ATTACHMENT B – MOTION TO DECREE REFILL
ENACTMENT VERSION***

the motions should be noticed and considered together. It is for this reason that the motions are being filed in the “main” SRBA case (case no. 39576) rather than in individual subcases only.

CONCLUSION

For the reasons discussed herein and in the Stipulation appended hereto under **Exhibit 1**, the State respectfully requests that this Court enter an order issuing a partial decree for water right no. 63-33734A of the form appended hereto as **Exhibit 2**.

[SIGNATURE BLOCK & CERTIFICATE OF SERVICE]

MOTION TO DECREE WATER RIGHT NO. 63-33734A - 4

***STIPULATION ATTACHMENT B – MOTION TO DECREE REFILL
ENACTMENT VERSION***

Exhibit 1

(Copy of “Stipulation” and Attachments)

MOTION TO DECREE WATER RIGHT NO. 63-33734A - 5

***STIPULATION ATTACHMENT B – MOTION TO DECREE REFILL
ENACTMENT VERSION***

Exhibit 2

(Form of Partial Decree for “Enactment Version” of Water Right No. 63-33734A)

MOTION TO DECREE WATER RIGHT NO. 63-33734A - 6

"Exhibit 2" to "Attachment B"

06/20/2018

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33734A

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 3,672,732.00 AFY

Water rights nos. 63-33734A, 63-303, 63-3613, 63-3614, 63-3618, and 63-33734B, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.

PRIORITY DATE: 9/30/1965

This water right is subordinate to all water rights established pursuant to Idaho law for uses within the IDWR Administrative Basin 63, except water rights to store more than 1,000 acre feet of surface water permitted or licensed after April 15, 2019. This water right shall not be administered as subordinate to water rights permitted or licensed for managed ground water recharge after April 15, 2019 or any water rights for the storage or use of water for power purposes.

POINT OF
DIVERSION: T02N R03E S11 SENE Lot 7 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION STORAGE	01/01 12/31	3,672,732.00 AFY
MUNICIPAL/INDUSTRIAL STORAGE	01/01 12/31	3,672,732.00 AFY
STREAMFLOW MAINTENANCE STORAGE	01/01 12/31	3,672,732.00 AFY

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage end uses as provided in the contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

PLACE OF USE: Place of use is on those lands identified under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or

percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.

2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.
3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, and 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.
4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of a final unified decree as it may be amended. Section 42-1412(6), Idaho Code.
5. The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective XX/XX, 2018, which is incorporated herein by reference.
6. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.
7. Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.
8. This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

ATTACHMENT C

**STIPULATION ATTACHMENT C – MOTION TO DECREE REFILL
NON-ENACTMENT VERSION**

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Attorneys for the State of Idaho

**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)	MOTION TO DECREE
)	WATER RIGHT NO. 63-33734A
Case No. 39576)	
_____)	

MOTION

The State of Idaho ("State"), by and through its attorneys of record, pursuant to Administrative Order 1, the Idaho Rules of Civil Procedure, and the "Stipulation" appended hereto as **Exhibit 1** ("Stipulation"), hereby moves this Court for an order issuing a partial decree for water right no. 63-33734A in the form attached hereto as **Exhibit 2**.

MOTION TO DECREE WATER RIGHT NO. 63-33734A - 1

**STIPULATION ATTACHMENT C – MOTION TO DECREE REFILL
NON-ENACTMENT VERSION**

DISCUSSION

The parties to SRBA subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738, and the parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, have entered into a Stipulation for the purpose of facilitating and expediting resolution of disputes that have arisen in various judicial and administrative proceedings pertaining to issues of the “fill” and/or “refill” of the storage water rights for the on-stream reservoirs in IDWR Administrative Basin 63 (Boise River Basin), including but not limited to: the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; the administrative and judicial proceedings underlying these same appeals and cross-appeals; and Snake River Basin Adjudication (“SRBA”) subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. *See Exhibit 1.*

The parties have agreed to seek issuance in the SRBA of partial decrees for water right nos. 63-33734A and water right no. 63-33734B of the forms proposed by this motion and the concurrently filed motion to decree water right no. 63-33734B.¹ The parties have also agreed to seek orders decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

Under the Stipulation, the form of the proposed partial decree for water right no.

¹ Pursuant to the Stipulation, the State is also filing on this date: (1) a motion for an order issuing a partial decree for water right no. 63-33734B and decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; and (2) a motion to alter or amend the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

**STIPULATION ATTACHMENT C – MOTION TO DECREE REFILL
NON-ENACTMENT VERSION**

63-33734A to be submitted to this Court depended on whether certain legislation was enacted during the 2019 Regular Legislative Session. *See Exhibit 1.* That legislation has not been enacted, and the State therefore moves this Court for an order issuing a partial decree for water right no. 63-33734A of the form appended hereto as **Exhibit 2.**

If this Court issues a partial decree for water right no. 63-33734A that is materially consistent with the proposed partial decree appended hereto as **Exhibit 2**, and also issues a partial decree for water right no. 63-33734B that is materially consistent with the form of proposed partial decree appended to the motion to decree water right no. 63-33734B, the parties have agreed to jointly move the Idaho Supreme Court for dismissal of the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, with instructions to this Court to vacate the orders that are the subject of the appeals and cross-appeals. If this Court does not issue partial decrees materially consistent with the partial decrees proposed by the State pursuant to the Stipulation, the parties have agreed the appeals and cross-appeals will proceed to oral argument on the first available date after November 30, 2019. *See Exhibit 1.*²

For this reason, time is of the essence and the State therefore requests expeditious consideration of this motion, so that it can be noticed, any potential objections resolved, and a partial decree issued, no later than November 30, 2019. *See Exhibit 1.* Because

² The Idaho Supreme Court has granted motions to suspend the appeals and reschedule oral argument on the appeals and cross-appeals for the first available setting after November 30, 2019.

***STIPULATION ATTACHMENT C – MOTION TO DECREE REFILL
NON-ENACTMENT VERSION***

this motion is related to the concurrently-filed motions required by the Stipulation,³ all of the motions should be noticed and considered together. It is for this reason that the motions are being filed in the “main” SRBA case (case no. 39576) rather than in individual subcases only.

CONCLUSION

For the reasons discussed herein and in the Stipulation appended hereto under **Exhibit 1**, the State respectfully requests that this Court enter an order issuing a partial decree for water right no. 63-33734A of the form appended hereto as **Exhibit 2**.

[SIGNATURE BLOCK & CERTIFICATE OF SERVICE]

³ See *supra* note 1.

***STIPULATION ATTACHMENT C – MOTION TO DECREE REFILL
NON-ENACTMENT VERSION***

Exhibit 1

(Copy of “Stipulation” and Attachments)

MOTION TO DECREE WATER RIGHT NO. 63-33734A - 5

***STIPULATION ATTACHMENT C – MOTION TO DECREE REFILL
NON-ENACTMENT VERSION***

Exhibit 2

(Form of Partial Decree for “Non-Enactment” Version of Water Right No. 63-33734A)

MOTION TO DECREE WATER RIGHT NO. 63-33734A - 6

"Exhibit 2" to "Attachment C"

06/20/2018

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33734A

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR FN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 3,672,732.00 AFY

Water rights nos. 63-33734A, 63-303, 63-3613, 63-3614, 63-3618, and 63-33734B, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.

PRIORITY DATE: 9/30/1965

This water right is subordinate to all water rights established pursuant to Idaho law for uses within the IDWR Administrative Basin 63. This water right shall not be administered as subordinate to water rights permitted or licensed for managed ground water recharge after April 15, 2019 or any water rights for the storage or use of water for power purposes.

POINT OF
DIVERSION: T02N R03E S11 SENE Lot 7 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION STORAGE	01/01 12/31	3,672,732.00 AFY
MUNICIPAL/INDUSTRIAL STORAGE	01/01 12/31	3,672,732.00 AFY
STREAMFLOW MAINTENANCE STORAGE	01/01 12/31	3,672,732.00 AFY

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage and uses as provided in the contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

PLACE OF USE: Place of use is on those lands identified under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of

the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.

2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, or Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, or Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.
3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, and 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.
4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of a final unified decree as it may be amended. Section 42-1412(6), Idaho Code.
5. The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective XX/XX, 2018, which is incorporated herein by reference.
6. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.
7. Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.
8. This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

ATTACHMENT D

STIPULATION ATTACHMENT D – MOTION TO DECREE REFILL2

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Attorneys for the State of Idaho

**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

)
) **MOTION TO DECREE**
) **WATER RIGHT NO. 63-33734B and**
) **DISALLOW WATER RIGHT CLAIM NOS.**
) **63-33732, 63-33733, 63-33734, 63-33737,**
) **AND 63-33738**

MOTION

The State of Idaho ("State"), by and through its attorneys of record, pursuant to Administrative Order 1, the Idaho Rules of Civil Procedure, and the "Stipulation" appended hereto as **Exhibit 1** ("Stipulation"), hereby moves this Court for: (1) an order rescinding this Court's order recommitting to the Special Master water right claim nos. 63-

MOTION TO DECREE WATER RIGHT NO. 63-33734B AND DISALLOW WATER RIGHT CLAIM NOS.
63-33732, 63-33733, 63-33734, 63-33737, AND 63-33738 - 1

STIPULATION ATTACHMENT D – MOTION TO DECREE REFILL²

33732, 63-33733, 63-33734, 63-33737, and 63-33738¹; (2) an order issuing a partial decree for water right no. 63-33734B in the form attached hereto as **Exhibit 2**; and (3) orders decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

DISCUSSION

The parties to SRBA subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738, and the parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, have entered into a Stipulation for the purpose of facilitating and expediting resolution of disputes that have arisen in various judicial and administrative proceedings pertaining to issues of the “fill” and/or “refill” of the storage water rights for the on-stream reservoirs in IDWR Administrative Basin 63 (Boise River Basin), including but not limited to: the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; the administrative and judicial proceedings underlying these same appeals and cross-appeals; and Snake River Basin Adjudication (“SRBA”) subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. See **Exhibit 1**.

The parties have agreed to seek issuance in the SRBA of partial decrees for water right nos. 63-33734A and water right no. 63-33734B of the forms proposed by this

¹ *Memorandum Decision and Order on Challenge and Order of Recommitment to Special Master, Subcase Nos. 63-33732 (consolidated subcase no. 63-33737), 63-33733 (consolidated subcase no. 63-33738), and 63-33734 (Sep. 1, 2016).*

MOTION TO DECREE WATER RIGHT NO. 63-33734B AND DISALLOW WATER RIGHT CLAIM NOS. 63-33732, 63-33733, 63-33734, 63-33737, AND 63-33738 - 2

STIPULATION ATTACHMENT D – MOTION TO DECREE REFILL²

motion and the concurrently filed motion to decree water right no. 63-33734A.² The parties have also agreed to seek orders decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. *See Exhibit 1.*

If this Court issues partial decrees for water right nos. 63-33734A and 63-33734B that are materially consistent with the forms of proposed partial decrees appended to the motions filed by the State pursuant to the Stipulation, the parties have agreed to jointly move the Idaho Supreme Court for dismissal of the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, with instructions to this Court to vacate the orders that are the subject of the appeals and cross-appeals. If this Court does not issue partial decrees materially consistent with the partial decrees proposed by the State pursuant to the Stipulation, the parties have agreed the appeals and cross-appeals will proceed to oral argument on the first available date after November 30, 2019. *See Exhibit 1.*³

For this reason, time is of the essence and the State therefore requests expeditious consideration of this motion, so that it can be noticed, any potential objections resolved, and a partial decree issued, no later than November 30, 2019. *See Exhibit 1.* Because this motion is related to the concurrently-filed motions required by the Stipulation,⁴ all of

² Pursuant to the Stipulation, the State is also filing on this date: (1) a motion for an order issuing a partial decree for water right no. 63-33734A; and (2) a motion to alter or amend the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

³ The Idaho Supreme Court has granted motions to suspend the appeals and reschedule oral argument on the appeals and cross-appeals for the first available setting after November 30, 2019.

⁴ *See supra* note 2.

MOTION TO DECREE WATER RIGHT NO. 63-33734B AND DISALLOW WATER RIGHT CLAIM NOS. 63-33732, 63-33733, 63-33734, 63-33737, AND 63-33738 - 3

STIPULATION ATTACHMENT D – MOTION TO DECREE REFILL2

the motions should be noticed and considered together. It is for this reason that the motions are being filed in the “main” SRBA case (case no. 39576) rather than in individual subcases only.

CONCLUSION

For the reasons discussed herein and in the Stipulation appended hereto under **Exhibit 1**, the State respectfully requests that this Court enter orders: (1) rescinding this Court’s order recommitting to the Special Master water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; (2) issuing a partial decree for water right no. 63-33734B of the form appended hereto as **Exhibit 2**; and (3) decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

[SIGNATURE BLOCK & CERTIFICATE OF SERVICE]

MOTION TO DECREE WATER RIGHT NO. 63-33734B AND DISALLOW WATER RIGHT CLAIM NOS.
63-33732, 63-33733, 63-33734, 63-33737, AND 63-33738 - 4

Exhibit 1

(Copy of “Stipulation” and Attachments)

MOTION TO DECREE WATER RIGHT NO. 63-33734B AND DISALLOW WATER RIGHT CLAIM NOS.
63-33732, 63-33733, 63-33734, 63-33737, AND 63-33738 - 5

Exhibit 2

(Form of Partial Decree for Water Right No. 63-33734B)

MOTION TO DECREE WATER RIGHT NO. 63-33734B AND DISALLOW WATER RIGHT CLAIM NOS.
63-33732, 63-33733, 63-33734, 63-33737, AND 63-33738 - 6

"Exhibit 2" to "Attachment D"

06/20/2018

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33734B

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 587,056.00 AFY

Water rights nos. 63-33734B, 63-303, 63-3613, 63-3614, 63-3618, and 63-33734A are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.

This water right may be exercised only to replace water released for flood control purposes, as determined by the Water District 63 watermaster, supervised by the director of the Department of Water Resources. In determining the timing, duration, and magnitude of flood control releases for the purpose of administering this water right and distributing natural flow in accordance with state law, the watermaster as supervised by the Director will consider, but will not be bound by, the November 20, 1953, "Memorandum of Agreement Between the Department of the Army and the Department of the Interior for Flood Control Operation of Boise River Reservoirs, Idaho" (hereinafter "MOA") and the 1985 "Memorandum of Understanding for Confirmation, Ratification, and Adoption of the Water Control Manual-Boise River Reservoirs, Boise, Idaho" (hereinafter "Manual"). The watermaster as supervised by the Director may also consider, but will not be bound by, the United States' determinations of the purposes for which water is being released from Lucky Peak Dam. The watermaster as supervised by the Director may also consider any other information the Director deems relevant.

The watermaster's determinations, as supervised by the director, of the timing, duration, and magnitude of flood control releases shall not affect or bind the United States' determinations, authority, or discretion under federal law for purposes of operating its reservoirs for flood control purposes in accordance with the 1946 Flood Control Act, 60 Stat 641, as amended or supplemented, and the MOA and Manual as they may be revised pursuant to the forgoing law.

Water will not accrue towards the satisfaction of this water right until the United States of America, acting through the Bureau of Reclamation, has notified the Water District 63 watermaster of the calendar date on which it intends to store water pursuant to this water right. Following initial notification, the United States can provide notification directing the Water District 63 Watermaster to stop and start the accrual of water pursuant to this water right, until the water right has been satisfied. All notifications must be made in writing. Each notification must identify the specific calendar date on which administrative action should occur. The identified calendar date cannot predate the date of written notification.

PRIORITY DATE: 03/16/1973

POINT OF
DIVERSION: T02N R03E S11 SENE Lot 7 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION STORAGE	01/01 07/31	587,056.00 AFY

MUNICIPAL/INDUSTRIAL STORAGE 01/01 07/31 587,056.00 AFY

STREAMFLOW MAINTENANCE STORAGE 01/01 07/31 587,056.00 AFY

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage end uses as provided in contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

PLACE OF USE: Place of use is on those lands identified under water right nos. 63-303, 63-3613, and 63-3614, and 63-3618.

Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.
2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.
3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, and 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.
4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of the final unified decree as it may be amended. Section 42-1412(6), Idaho Code.
5. This water right is subordinate to the following water rights:
 - a. All surface water rights within IDWR Administrative Basin 63 with a priority date earlier than May 1, 2014, with a decreed or licensed diversion rate of less than 0.1 CFS;
 - b. All water rights listed on attachment A.
6. The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective XX/XX, 2018, which is incorporated herein by reference.
7. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2)

before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.

8. Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.
9. This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

Exhibit A

Subordination Summary - Surface Water Rights - 4/22/18

Row #	WRN	Priority	Right ID	Diversion
1	63-7866	9/12/1973	557848	0.48
2	63-31290A	4/1/1974	572177	0.52
3	63-8004	7/1/1974	556833	0.20
4	63-19543	1/20/1975	554371	0.14
5	63-8199	8/29/1975	557220	0.12
6	63-8380	10/26/1976	556166	0.20
7	63-8393	12/9/1976	556140	0.20
8	63-8647	4/1/1977	555114	0.11
9	63-8960	6/16/1977	556141	0.18
10	63-9433	8/11/1980	556057	0.76
11	63-9438	9/8/1980	56983	0.11
12	63-9642	11/6/1980	577389	0.44
13	63-9688	2/17/1981	557569	0.15
14	63-9684	2/27/1981	557573	0.53
15	63-9699	3/31/1981	556171	0.40
16	63-9683	4/14/1981	557574	0.20
17	63-9942	7/16/1982	557481	0.20
18	63-9982	2/3/1983	57523	0.20
19	63-10111	7/20/1983	57650	0.30
20	63-10254	7/19/1984	57789	0.19
21	63-10279	4/6/1985	556078	0.13
22	63-10324	9/17/1985	657871	0.36
23	63-10325	9/17/1985	657870	0.36
24	63-9750	8/10/1987	556120	1.00
25	63-10560	11/18/1987	16211	0.96
26	63-10776	3/6/1989	89991	0.20
27	63-7226	3/14/1989	54740	0.17
28	63-11619	12/31/1991	59098	0.18
29	63-12567	8/13/1999	547801	0.20
30	63-32016	12/6/2004	592234	1.76
31	63-11439	2/22/1991	667738	1.00
32	63-12055	9/8/1993	36385	24.80
33	63-12399	6/6/1997	672197	3.40
34	63-12420	6/6/1997	671689	5.00
35	63-31409	11/16/2001	559840	20.00
36	63-9346	2/19/1980	638003	0.50
37	63-9944	8/11/1982	600805	1.00
38	63-32537	11/15/1986	607915	0.56
39	63-10810	6/12/1989	15042	4.10
40	63-12113	4/25/1994	613711	0.12
41	63-33905	1/30/2014	671170	0.40
				71.83

Exhibit A

Subordination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
1	63-7754	3/20/1973	55284	0.04
2	63-4284	4/15/1973	53350	0.04
3	63-7792	5/8/1973	55323	0.04
4	63-7794	5/17/1973	553394	0.04
5	63-4766	6/1/1973	53855	0.04
6	63-15335	6/15/1973	377273	0.02
7	63-15406	6/15/1973	377553	0.04
8	63-19090	6/15/1973	373130	0.04
9	63-7824	7/10/1973	55355	0.04
10	63-7822	7/12/1973	55353	0.04
11	63-7826	7/13/1973	378714	0.04
12	63-7835	7/19/1973	372954	0.04
13	63-15123	7/20/1973	378844	0.04
14	63-7807	8/3/1973	555963	0.04
15	63-4563	8/20/1973	53630	0.04
16	63-4571	8/22/1973	53638	0.04
17	63-7781	8/29/1973	557020	0.44
18	63-19423	9/4/1973	373296	0.04
19	63-7856	9/4/1973	55386	0.04
20	63-15129	10/15/1973	378848	0.04
21	63-7901	12/5/1973	55436	0.02
22	63-15069	12/31/1973	376355	0.04
23	63-15421	12/31/1973	377560	0.04
24	63-7943	3/1/1974	55477	0.04
25	63-30441	5/1/1974	145925	0.06
26	63-18966	5/10/1974	379529	0.04
27	63-15279	5/24/1974	377260	0.04
28	63-19269	6/1/1974	344556	0.04
29	63-19270	6/1/1974	344557	0.04
30	63-15431	7/1/1974	368155	0.06
31	63-19052	8/9/1974	553368	0.02
32	63-19053	8/9/1974	406969	0.02
33	63-19054	8/9/1974	406970	0.02
34	63-19614	8/15/1974	373377	0.04
35	63-24097	8/15/1974	141904	0.04
36	63-19896	1/1/1975	379678	0.04
37	63-8067	1/6/1975	660521	5.49
38	63-19484	5/14/1975	373325	0.02
39	63-19142	5/30/1975	373160	0.04
40	63-19333	5/30/1975	406386	0.04
41	63-15420	6/1/1975	377559	0.04
42	63-15303	7/1/1975	319522	0.04
43	63-29396	7/1/1975	406986	0.04

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Row #	WRN	Priority	Right ID	Diversion
44	63-19462	9/1/1975	373314	0.04
45	63-8204	9/7/1975	378726	0.04
46	63-30487	9/16/1975	193220	0.04
47	63-15177	9/26/1975	379891	0.04
48	63-8224	10/20/1975	55760	0.04
49	63-8237	12/4/1975	406437	0.04
50	63-30404	12/31/1975	368271	0.04
51	63-24106	3/6/1976	406312	0.04
52	63-19720	5/1/1976	379590	0.04
53	63-19159	5/24/1976	553853	0.04
54	63-19630	5/29/1976	373385	0.04
55	63-30347	6/1/1976	406329	0.04
56	63-30349	6/1/1976	406331	0.04
57	63-30352	6/1/1976	406333	0.04
58	63-8317	6/1/1976	557570	0.13
59	63-18965	6/8/1976	379528	0.04
60	63-30436	6/15/1976	391930	0.03
61	63-15109	7/1/1976	378832	0.04
62	63-15141	7/1/1976	378857	0.04
63	63-15363	7/1/1976	377539	0.04
64	63-22114	7/1/1976	370819	0.04
65	63-4667	7/1/1976	53749	0.04
66	63-15138	7/10/1976	378854	0.04
67	63-19451	8/6/1976	406300	0.04
68	63-19429	9/10/1976	373297	0.04
69	63-4559	10/30/1976	400345	0.04
70	63-15203	2/1/1977	377233	0.04
71	63-8500	2/25/1977	552831	0.04
72	63-15114	3/1/1977	378835	0.04
73	63-16361	3/2/1977	377449	0.02
74	63-8714	3/11/1977	372956	0.04
75	63-8643	4/1/1977	556062	0.22
76	63-8678	4/7/1977	56217	0.04
77	63-8691	4/20/1977	56230	0.03
78	63-15061	6/1/1977	378800	0.01
79	63-18331	6/1/1977	379453	0.04
80	63-8961	6/13/1977	372958	0.02
81	63-8957	6/15/1977	378736	0.02
82	63-15160	7/1/1977	378869	0.04
83	63-15284	7/1/1977	377261	0.04
84	63-8976	7/11/1977	557482	0.08
85	63-15413	7/15/1977	376356	0.04
86	63-30217	7/20/1977	370830	0.04

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Subordination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
87	63-15081	8/1/1977	378815	0.06
88	63-16175	8/15/1977	377373	0.06
89	63-15128	8/20/1977	376090	0.04
90	63-15189	9/1/1977	377225	0.04
91	63-15118	9/15/1977	378839	0.02
92	63-19694	9/30/1977	379578	0.09
93	63-15066	10/1/1977	378805	0.04
94	63-27142	10/1/1977	141937	0.04
95	63-32439	10/15/1977	604957	0.01
96	63-15403	10/20/1977	377551	0.04
97	63-15404	10/20/1977	377552	0.04
98	63-9061	10/24/1977	552783	0.04
99	63-26301	11/15/1977	406316	0.04
100	63-26830	11/15/1977	406320	0.04
101	63-19306	11/29/1977	406297	0.04
102	63-28349	12/31/1977	376105	0.04
103	63-28504	12/31/1977	126810	0.04
104	63-15147	2/1/1978	378862	0.04
105	63-31106	3/1/1978	568537	0.04
106	63-30216	3/30/1978	368218	0.04
107	63-15068	5/24/1978	378807	0.04
108	63-15119	5/31/1978	378840	0.04
109	63-15102	6/1/1978	396957	0.02
110	63-19229	6/1/1978	373206	0.04
111	63-25728	6/1/1978	406313	0.04
112	63-27063	6/10/1978	145365	0.08
113	63-15394	6/15/1978	376098	0.02
114	63-15314	6/22/1978	377269	0.04
115	63-19160	7/9/1978	553854	0.04
116	63-19063	7/25/1978	406971	0.04
117	63-19440	7/27/1978	373302	0.05
118	63-15096	7/31/1978	378822	0.04
119	63-16034	7/31/1978	377307	0.04
120	63-19232	8/1/1978	373209	0.04
121	63-9169	8/3/1978	378738	0.04
122	63-23396	8/7/1978	141668	0.02
123	63-30439	8/30/1978	396163	0.04
124	63-15104	9/1/1978	378828	0.04
125	63-30150	10/1/1978	368213	0.06
126	63-9189	10/18/1978	404613	0.01
127	63-15146	11/6/1978	378861	0.04
128	63-8384	11/15/1978	556068	0.18
129	63-30363	12/21/1978	368236	0.04

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Row #	WRN	Priority	Right ID	Diversion
130	63-9217	3/7/1979	552860	0.06
131	63-26644	4/15/1979	406319	0.03
132	63-9226	4/16/1979	404615	0.02
133	63-9227	4/16/1979	404616	0.02
134	63-9228	4/16/1979	404617	0.01
135	63-24108	5/3/1979	411185	0.03
136	63-9240	5/23/1979	378742	0.04
137	63-15107	5/29/1979	378830	0.04
138	63-24078	6/12/1979	141897	0.04
139	63-9256	6/22/1979	56798	0.04
140	63-20316	6/30/1979	406415	0.04
141	63-15230	7/1/1979	377243	0.04
142	63-15574	7/1/1979	396959	0.04
143	63-22161	7/1/1979	406308	0.04
144	63-15429	8/1/1979	377562	0.04
145	63-9273	8/6/1979	404618	0.01
146	63-15315	8/16/1979	377270	0.04
147	63-15060	9/14/1979	378799	0.04
148	63-15090	9/15/1979	376088	0.02
149	63-30444	9/17/1979	145443	0.04
150	63-30306	11/1/1979	370831	0.01
151	63-15217	4/1/1980	401352	0.06
152	63-24043	4/8/1980	141886	0.04
153	63-9381	5/19/1980	378746	0.04
154	63-15218	5/20/1980	396958	0.03
155	63-15210	6/1/1980	319515	0.04
156	63-15359	6/1/1980	377538	0.04
157	63-15648	6/1/1980	137945	0.04
158	63-18482	6/1/1980	379471	0.02
159	63-19194	6/1/1980	373184	0.05
160	63-15201	6/5/1980	377231	0.04
161	63-9394	6/10/1980	552824	0.08
162	63-9402	6/12/1980	556045	0.04
163	63-15245	7/1/1980	377249	0.02
164	63-19775	7/1/1980	379617	0.04
165	63-22269	7/1/1980	406975	0.04
166	63-15121	7/10/1980	378842	0.04
167	63-9425	7/29/1980	404620	0.02
168	63-15248	7/30/1980	377250	0.04
169	63-15029	8/7/1980	376085	0.04
170	63-30215	8/26/1980	370826	0.03
171	63-19433	9/24/1980	406298	0.04
172	63-15277	10/1/1980	377259	0.04

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Row #	WRN	Priority	Right ID	Diversion
173	63-15288	10/1/1980	377264	0.04
174	63-15808	10/14/1980	372971	0.04
175	63-9651	12/5/1980	553422	0.08
176	63-15619	12/31/1980	376100	0.04
177	63-31457	1/1/1981	558779	0.03
178	63-26144	1/22/1981	406980	0.04
179	63-30329	1/22/1981	406328	0.04
180	63-27340	3/25/1981	139901	0.04
181	63-15135	5/15/1981	376091	0.04
182	63-15932	5/19/1981	406293	0.08
183	63-28747	6/1/1981	368200	0.04
184	63-15228	6/4/1981	377241	0.02
185	63-15354	7/1/1981	377537	0.04
186	63-19491	7/5/1981	373328	0.06
187	63-26175	7/15/1981	406982	0.06
188	63-29959	7/31/1981	376107	0.04
189	63-19705	8/25/1981	379584	0.04
190	63-19076	9/2/1981	373128	0.04
191	63-9821	9/28/1981	378754	0.03
192	63-22836	10/1/1981	160025	0.04
193	63-9748	10/12/1981	556173	0.07
194	63-17396	11/4/1981	379050	0.04
195	63-9900	4/30/1982	552864	0.06
196	63-15287	5/20/1982	377263	0.04
197	63-15072	5/31/1982	376086	0.04
198	63-15105	6/1/1982	378829	0.04
199	63-18484	6/1/1982	376102	0.04
200	63-19477	6/1/1982	406269	0.04
201	63-9924	6/22/1982	57465	0.04
202	63-18964	7/6/1982	379527	0.04
203	63-15034	7/14/1982	406438	0.04
204	63-19268	8/20/1982	406344	0.02
205	63-32240	1/1/1983	604376	0.06
206	63-9974	1/20/1983	560226	0.04
207	63-19455	3/15/1983	373308	0.04
208	63-10011	3/29/1983	372963	0.08
209	63-10045	5/18/1983	372964	0.02
210	63-19449	5/20/1983	550845	0.04
211	63-15510	5/30/1983	376099	0.04
212	63-10068	6/9/1983	404630	0.04
213	63-10080	6/9/1983	404631	0.01
214	63-10135	6/9/1983	404632	0.02
215	63-10148	6/9/1983	404633	0.01

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Row #	WRN	Priority	Right ID	Diversion
216	63-25957	6/13/1983	368190	0.04
217	63-10089	6/15/1983	57629	0.08
218	63-10083	6/21/1983	553418	0.05
219	63-10087	6/21/1983	556089	0.04
220	63-10082	6/22/1983	57622	0.04
221	63-10192A	6/22/1983	378767	0.04
222	63-10192B	6/22/1983	557578	0.02
223	63-10092	6/23/1983	378763	0.04
224	63-15468	6/25/1983	377566	0.04
225	63-33445	6/28/1983	637243	0.12
226	63-33446	6/28/1983	637244	0.08
227	63-15095	7/1/1983	378821	0.07
228	63-28936	7/21/1983	368202	0.02
229	63-30445	10/10/1983	373846	0.02
230	63-30272	1/1/1984	368234	0.04
231	63-26374	4/30/1984	406318	0.04
232	63-15145	5/17/1984	378860	0.01
233	63-15286	6/1/1984	377262	0.04
234	63-15113	7/1/1984	378834	0.04
235	63-15298	7/1/1984	319128	0.04
236	63-19029	7/1/1984	406295	0.03
237	63-15140	8/5/1984	378856	0.04
238	63-15202	8/20/1984	377232	0.04
239	63-19191	10/2/1984	406296	0.04
240	63-19834	10/23/1984	379644	0.04
241	63-30255	1/1/1985	368232	0.04
242	63-15142	4/30/1985	378858	0.04
243	63-19458	6/1/1985	373310	0.04
244	63-18967	6/15/1985	379530	0.04
245	63-30470	6/30/1985	556467	0.04
246	63-19617	8/1/1985	373378	0.04
247	63-10318	8/9/1985	547746	0.45
248	63-19257	9/1/1985	411084	0.04
249	63-19271	9/15/1985	373226	0.04
250	63-15036	9/23/1985	372968	0.02
251	63-31531	9/25/1985	561550	0.02
252	63-15263	10/16/1985	377257	0.04
253	63-10332	10/25/1985	404634	0.02
254	63-15033	1/1/1986	372967	0.02
255	63-29748	3/31/1986	376106	0.04
256	63-15149	5/5/1986	378864	0.04
257	63-30391	5/10/1986	406988	0.08
258	63-15179	5/31/1986	377222	0.04

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Row #	WRN	Priority	Right ID	Diversion
259	63-15790	6/1/1986	376848	0.04
260	63-19741	6/16/1986	379604	0.02
261	63-18858	6/27/1986	379512	0.04
262	63-18969	8/6/1986	144413	0.04
263	63-30442	8/6/1986	396219	0.04
264	63-15633	11/1/1986	380085	0.02
265	63-10457	3/24/1987	552894	0.18
266	63-30440	5/11/1987	145921	0.04
267	63-15007	6/1/1987	372965	0.02
268	63-19732	6/1/1987	406305	0.04
269	63-10506	6/16/1987	557478	0.04
270	63-26364	6/19/1987	406317	0.04
271	63-15064	7/1/1987	378803	0.03
272	63-19653	8/17/1987	379553	0.07
273	63-27344	8/19/1987	344373	0.04
274	63-10529	8/24/1987	58066	0.04
275	63-15378	9/10/1987	319558	0.09
276	63-31228	9/10/1987	570110	0.13
277	63-17402	11/12/1987	378589	0.04
278	63-15152	11/17/1987	319378	0.04
279	63-10559	11/18/1987	58094	0.06
280	63-31474	5/31/1988	559221	0.02
281	63-10641	6/17/1988	411503	0.01
282	63-15222	8/1/1988	319114	0.03
283	63-16033	10/7/1988	376101	0.04
284	63-27069	10/8/1988	376103	0.04
285	63-30332	12/1/1988	376109	0.04
286	63-10771	2/23/1989	58289	0.11
287	63-19708	4/1/1989	406303	0.04
288	63-19709	4/1/1989	406304	0.04
289	63-10787	5/1/1989	58305	0.04
290	63-10796	5/12/1989	556013	0.07
291	63-10800	5/19/1989	58317	0.04
292	63-10797	5/23/1989	101360	0.08
293	63-26300	6/26/1989	406983	0.03
294	63-19728	9/1/1989	379598	0.04
295	63-11013	9/27/1989	555411	0.03
296	63-9171	10/6/1989	56709	0.22
297	63-11070	10/16/1989	550744	0.13
298	63-11078	11/14/1989	98741	0.06
299	63-11083	11/24/1989	58572	0.04
300	63-11079	11/29/1989	58569	0.04
301	63-11080	11/29/1989	58570	0.02

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Row #	WRN	Priority	Right ID	Diversion
302	63-11061	12/5/1989	101743	0.04
303	63-11513	3/14/1991	594903	9.68
304	63-11514	5/10/1991	594912	9.68
305	63-30359	7/26/1991	406487	0.07
306	63-29419	8/19/1991	406321	0.06
307	63-11596	10/9/1991	17450	0.04
308	63-11637	2/5/1992	7803	0.05
309	63-10802	4/21/1992	103333	0.38
310	63-31468	6/11/1992	559146	0.02
311	63-30341	6/29/1992	406483	0.07
312	63-11936	9/21/1992	97295	0.04
313	63-11957	9/29/1992	102074	0.02
314	63-11943	10/15/1992	4346	0.15
315	63-11958	10/16/1992	102077	0.04
316	63-29443	6/1/1993	368203	0.04
317	63-12041	7/31/1993	671226	0.09
318	63-30086	8/14/1993	368210	0.04
319	63-12059	9/28/1993	103377	0.12
320	63-30371	6/23/1994	376110	0.01
321	63-12128	7/27/1994	103145	0.04
322	63-12146	9/20/1994	611488	0.04
323	63-12153	11/10/1994	620453	0.40
324	63-32239	11/14/1994	604375	0.06
325	63-30190	12/5/1994	370823	0.06
326	63-30365	6/3/1995	368237	0.04
327	63-30364	9/7/1995	369762	0.04
328	63-12317	2/6/1996	663368	0.10
329	63-30369	3/14/1996	368239	0.04
330	63-31285	4/8/1996	557504	0.04
331	63-30370	4/10/1996	369763	0.04
332	63-12350	8/1/1996	103326	0.04
333	63-33044	9/15/1996	621257	0.04
334	63-30421	10/13/1996	406337	0.04
335	63-12537	7/7/1999	630730	0.14
336	63-12558	12/9/1999	551761	0.03
337	63-12608	11/27/2000	658112	0.11
338	63-31218	3/23/2001	556578	0.14
339	63-31311	8/27/2001	559183	0.04
340	63-31503	5/28/2002	657845	0.04
341	63-12507	8/2/2004	110175	0.08
342	63-32180	3/3/2005	596264	0.15
343	63-32393	3/2/2006	627706	0.04
344	63-32945	11/27/2007	630788	0.12

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Row #	WRN	Priority	Right ID	Diversion
345	63-33933	9/25/2008	671262	0.02
346	63-33321	12/21/2009	649729	0.06
347	63-33379	5/17/2010	639436	0.04
348	63-33532	6/13/2011	651391	0.09
349	63-33677	7/30/2012	669655	0.04
350	63-33800	6/26/2013	671975	0.04
351	63-33888	1/3/2014	671931	0.67
				42.65

ATTACHMENT E

STIPULATION ATTACHMENT E – MOTION TO RESET ORAL ARGUMENT

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF ACCOUNTING FOR
DISTRIBUTION OF WATER TO THE
FEDERAL ON-STREAM RESERVOIRS IN
WATER DISTRICT 63 BEFORE THE
IDAHO DEPARTMENT OF WATER
RESOURCES.

BALLENTYNE DITCH COMPANY; BOISE
VALLEY IRRIGATION DITCH
COMPANY; CANYON COUNTY WATER
COMPANY; EUREKA WATER
COMPANY; FARMERS' CO-OPERATIVE
DITCH COMPANY; MIDDLETON MILL
DITCH COMPANY; MIDDLETON
IRRIGATION ASSOCIATION, INC.;
NAMPA & MERIDIAN IRRIGATION
DISTRICT; NEW DRY CREEK DITCH
COMPANY; PIONEER DITCH COMPANY;
PIONEER IRRIGATION DISTRICT;
SETTLERS IRRIGATION DISTRICT;

Supreme Court Docket No. 44746-2017
(separate motion necessary for each appeal)

**JOINT MOTION TO SUSPEND APPEAL
AND RESET ORAL ARGUMENT**

JOINT MOTION TO SUSPEND APPEAL AND RESET ORAL ARGUMENT - 1

STIPULATION ATTACHMENT E – MOTION TO RESET ORAL ARGUMENT

SOUTH BOISE WATER COMPANY; and
THURMAN MILL DITCH COMPANY,

Respondents,

vs.

BOISE PROJECT BOARD OF CONTROL,
and NEW YORK IRRIGATION DISTRICT,

Respondents,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN, in
his capacity as the Director of the Idaho
Department of Water Resources,

Appellants,

and

SUEZ WATER IDAHO, INC.,

Respondent.

The parties to the above-captioned appeal hereby jointly move this Court, pursuant to Rule 13.2 of the Idaho Appellate Rules, to suspend this appeal and reset oral argument to the first setting available after November 30, 2019. As discussed below, there is good cause for granting this relief because the parties have agreed to a settlement that if implemented in accordance with the terms of the parties' settlement stipulation would render this appeal moot, and the parties would jointly move for dismissal of this appeal. Otherwise the appeal would proceed to oral argument on the first date available after November 30, 2019.

Statement in Support of Motion to Suspend Appeal

JOINT MOTION TO SUSPEND APPEAL AND RESET ORAL ARGUMENT - 2

STIPULATION ATTACHMENT E – MOTION TO RESET ORAL ARGUMENT

The parties to the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 have entered into a stipulation for the purpose of facilitating and expediting resolution of disputes that have arisen in various judicial and administrative proceedings pertaining to issues of the “fill” and/or “refill” of the storage water rights for the on-stream reservoirs in IDWR Administrative Basin 63 (Boise River Basin), including but not limited to: the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; the administrative and judicial proceedings underlying these same appeals and cross-appeals; and Snake River Basin Adjudication (“SRBA”) subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

The parties have agreed to seek issuance in the SRBA of partial decrees and orders to implement the proposed settlement, and the form of one of the proposed partial decrees to be submitted to the SRBA Court depends on whether certain legislation is enacted during the 2019 Regular Legislative Session. If the SRBA district court issues partial decrees materially consistent with the proposed partial decrees the parties have agreed to submit to the SRBA district court, the parties have agreed to jointly move this Court for dismissal of the appeals and cross-appeals with instructions to the District Court to vacate the orders that are the subject of the appeals and cross-appeals. If the SRBA district court does not issue partial decrees materially consistent with the partial decrees to be submitted to the SRBA district court, the parties have agreed the appeals and cross-appeals will proceed to oral argument on the first date available after November 30, 2019.

The settlement contemplated by the parties’ stipulation thus depends in part on whether

JOINT MOTION TO SUSPEND APPEAL AND RESET ORAL ARGUMENT - 3

STIPULATION ATTACHMENT E – MOTION TO RESET ORAL ARGUMENT

on whether certain legislation is enacted during the 2019 Regular Legislative Session. The parties therefore request that the appeals and cross-appeals be suspended and oral argument rescheduled for the first available setting after November 2019. If the settlement is successfully implemented in accordance with the terms of the parties' stipulation, the appeals and cross-appeals would be rendered moot and the parties would jointly move for dismissal of the appeals and cross-appeals. If the settlement is not successfully implemented in accordance with the terms of the stipulation, the appeals and cross-appeals would proceed to oral argument on the first available date after November 30, 2019.

For these reasons, the parties respectfully submit there is good cause to grant this motion, and respectfully request that this Court suspend this appeal and reschedule oral argument for the first setting available after November 30, 2019.

Respectfully submitted this _____ day of June, 2018.

[SIGNATURE BLOCK AND CERTIFICATE OF SERVICE]

JOINT MOTION TO SUSPEND APPEAL AND RESET ORAL ARGUMENT - 4

ATTACHMENT F

**STIPULATION ATTACHMENT F –
MOTION TO ALTER OR AMEND EXISTING PARTIAL DECREES**

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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)	
)	MOTION TO ALTER OR AMEND
)	PARTIAL DECREES FOR WATER
Case No. 39576)	RIGHT NOS. 63-303, 63-3613, 63-3614,
)	and 63-3618
_____)	

MOTION

The State of Idaho (“State”), by and through its attorneys of record, pursuant to Administrative Order 1 and Rule 60(b)(6) of the Idaho Rules of Civil Procedure, and the “Stipulation” appended hereto as **Exhibit 1**, hereby moves this Court to alter or amend the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618 for the limited purpose of including two “remarks” that are necessary for efficient administration of the

MOTION TO ALTER OR AMEND PARTIAL DECREES
FOR WATER RIGHT NOS. 63-30, 63-3613, 63-3614, & 63-3618 - 1

**STIPULATION ATTACHMENT F –
MOTION TO ALTER OR AMEND EXISTING PARTIAL DECREES**

water rights under a proposed settlement of ongoing disputes over the “fill” and/or “refill” of the storage water rights for on-stream reservoirs in Administrative Basin 63. Specifically, this motion requests that two remarks be added to the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618, as follows:

- a. In the “Quantity” element, the following combined volume limit remark:
“Water rights nos. 63-303, 63-3613, 63-3614, 63-3618, 63-33734A, and 63-33734B, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water”;
- b. In the “Other Provisions” element, the following remark addressing “reset”:
“The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided, however, the annual time period will begin (1) after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.”

DISCUSSION

Rule 60(b)(6) of the Idaho Rules of Civil Procedure authorizes this Court to alter or amend a partial decree for “any other reason that justifies relief.” I.R.C.P. 60(b)(6). This provision is applicable to this motion because addition of the above-described remarks to the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618 is a

MOTION TO ALTER OR AMEND PARTIAL DECREES
FOR WATER RIGHT NOS. 63-30, 63-3613, 63-3614, & 63-3618 - 2

**STIPULATION ATTACHMENT F –
MOTION TO ALTER OR AMEND EXISTING PARTIAL DECREES**

limited amendment and necessary for efficient administration of the water rights under the proposed settlement of the ongoing disputes over the “fill” and/or “refill” of the storage water rights for on-stream reservoirs in Administrative Basin 63.

As this Court is aware, disputes over the “fill” and/or “refill” of the storage water rights for on-stream reservoirs in Administrative Basin 63 arose in SRBA subcase no. 00-91017 and remain at issue in SRBA subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. Disputes over the “fill” and/or “refill” of the storage water rights for on-stream reservoirs in Administrative Basin 63 also arose in the administrative and judicial review proceedings that were the subject of Twin Falls County Case No. CV-WA-2015-21376 (Consolidated Ada County Case No. CV-WA-2015-21391). The same disputes have arisen in the subsequent appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017. *See Exhibit 1.*

These disputes present difficult and often contentious questions. The parties to the above-referenced SRBA proceedings and Idaho Supreme Court appeals and cross-appeals have been attempting for years to resolve these difficult matters through negotiations. In 2018 the parties entered into a Stipulation for the purpose of facilitating and expediting resolution of the above-referenced disputes pertaining to issues of the “fill” and/or “refill” of the storage water rights for the on-stream reservoirs in the Boise River Basin. *See Exhibit 1.*

Under the Stipulation, the parties agreed to seek issuance in the SRBA of partial decrees for water right nos. 63-33734A and water right no. 63-33734B of the forms

MOTION TO ALTER OR AMEND PARTIAL DECREES
FOR WATER RIGHT NOS. 63-30, 63-3613, 63-3614, & 63-3618 - 3

**STIPULATION ATTACHMENT F –
MOTION TO ALTER OR AMEND EXISTING PARTIAL DECREES**

proposed by the concurrently filed motions to decree those water rights.¹ The parties also agreed to seek orders decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. The parties also agreed to seek orders adding the above-described remarks to the existing partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 3618.

This motion is one of the motions required by the Stipulation. Full and final resolution of SRBA subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738 requires issuance of partial decrees of the form proposed in the concurrently-filed motions to decree water right nos. 63-33734A and 63-33734B. The proposed forms of the partial decrees for water right nos. 63-33734A and 63-33734B include remarks in the “Purpose and Period of Use” element stating that “[w]ater accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.” The proposed partial decrees also include the combined volume limit and “reset” remarks set forth above. *See Exhibit 1.*

In light of these remarks in the proposed partial decrees, it is necessary for the efficient administration of water rights nos. 63-303, 63-3613, 63-3614, and 63-3618 that their partial decrees be amended for the limited purpose of including the same combined volume limit and “reset” remarks set forth in the proposed partial decrees for water right nos. 63-33734A and 63-33734B. If the proposed partial decrees for water right nos. 63-

¹ Pursuant to the Stipulation, the State is also filing on this date: (1) a motion for an order issuing a partial decree for water right no. 63-33734A; and (2) a motion for an order issuing a partial decree for water right no. 63-33734B and decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

***STIPULATION ATTACHMENT F –
MOTION TO ALTER OR AMEND EXISTING PARTIAL DECREES***

33734A and 63-33734B are issued, but the existing partial decrees are not amended to include the same the same combined volume limit and “reset” remarks, there is a risk of future ambiguity, confusion, and dispute regarding the relationship between the two groups of water rights and how they are to be administered.

This would be contrary to the objective of promoting the efficient administration of water and water rights. Idaho Code §§ 42-111(2)(j), 42-1412(6). It would also defeat the purpose of the Stipulation to fully and finally resolve long-running disputes over the “fill” and/or “refill” of the storage water rights for on-stream reservoirs in Administrative Basin 63. Given these considerations, and the fact that all the other SRBA disputes over the “fill” and/or “refill” of the storage water rights for on-stream reservoirs have been resolved, the limited relief requested by this motion is authorized under Rule 60(b)(6).

CONCLUSION

For the reasons discussed herein, in the Stipulation appended hereto, and in the concurrently-filed motions to decree water right nos. 63-33734A and 63-33734B, the State respectfully requests that this Court issue orders amending the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618 for the limited purpose of including the combined volume limit and “reset” remarks set forth above.

This motion is related to the concurrently-filed motions to decree water right nos. 63-33734A and 63-33734B, and should be noticed and considered in conjunction with those motions. The State therefore requests expeditious consideration of this motion, so that it can be noticed, any potential objections resolved, no later than November 30, 2019.

MOTION TO ALTER OR AMEND PARTIAL DECREES
FOR WATER RIGHT NOS. 63-30, 63-3613, 63-3614, & 63-3618 - 5

***STIPULATION ATTACHMENT F –
MOTION TO ALTER OR AMEND EXISTING PARTIAL DECREES***
[SIGNATURE BLOCK & CERTIFICATE OF SERVICE]

MOTION TO ALTER OR AMEND PARTIAL DECREES
FOR WATER RIGHT NOS. 63-30, 63-3613, 63-3614, & 63-3618 - 6

ATTACHMENT G

STIPULATION ATTACHMENT G – MOTION TO DISMISS APPEALS

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF ACCOUNTING FOR
DISTRIBUTION OF WATER TO THE
FEDERAL ON-STREAM RESERVOIRS IN
WATER DISTRICT 63 BEFORE THE
IDAHO DEPARTMENT OF WATER
RESOURCES.

Supreme Court Docket No. 44746-2017
(*separate motion necessary for each appeal*)

JOINT MOTION TO DISMISS APPEAL

BALLENTYNE DITCH COMPANY; BOISE
VALLEY IRRIGATION DITCH
COMPANY; CANYON COUNTY WATER
COMPANY; EUREKA WATER
COMPANY; FARMERS' CO-OPERATIVE
DITCH COMPANY; MIDDLETON MILL
DITCH COMPANY; MIDDLETON
IRRIGATION ASSOCIATION, INC.;
NAMPA & MERIDIAN IRRIGATION
DISTRICT; NEW DRY CREEK DITCH
COMPANY; PIONEER DITCH COMPANY;
PIONEER IRRIGATION DISTRICT;
SETTLERS IRRIGATION DISTRICT;

JOINT MOTION TO DISMISS APPEAL - 1

STIPULATION ATTACHMENT G – MOTION TO DISMISS APPEALS

SOUTH BOISE WATER COMPANY; and
THURMAN MILL DITCH COMPANY,

Respondents,

vs.

BOISE PROJECT BOARD OF CONTROL,
and NEW YORK IRRIGATION DISTRICT,

Respondents,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN, in
his capacity as the Director of the Idaho
Department of Water Resources,

Appellants,

and

SUEZ WATER IDAHO, INC.,

Respondent.

The parties to the above-captioned appeal hereby jointly move this Court, pursuant to Rule 32(b) and Rule 33 of the Idaho Appellate Rules, to dismiss this appeal with prejudice, with all parties to bear their own costs and fees, and with instructions to the District Court to vacate its *Memorandum Decision and Order* (Sep. 1, 2016) and *Order Denying Rehearing* (Nov. 14, 2016) entered in the case underlying this appeal, Twin County Case No. CV-WA-2015-21376 (Consolidated Ada County Case No. CV-WA-2015-21391). As discussed below, the parties' stipulated settlement of their disputes over the "fill" and/or "refill" of the storage water rights for on-stream reservoirs in Administrative Basin 63 requires, among other things, dismissal of this

JOINT MOTION TO DISMISS APPEAL - 2

STIPULATION ATTACHMENT G – MOTION TO DISMISS APPEALS

appeal and the related appeals and cross-appeals, and vacatur of the District Court’s orders. The parties’ “Stipulation” and its “Attachments” are appended hereto as **Exhibit 1**.

As discussed in the parties’ June 2018 motion to suspend this appeal and reschedule oral argument for the first available date after November 30, 2019, the parties to the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 entered into a Stipulation for the purpose of facilitating and expediting resolution of disputes that have arisen in various judicial and administrative proceedings pertaining to issues of the “fill” and/or “refill” of the storage water rights for the on-stream reservoirs in IDWR Administrative Basin 63 (Boise River Basin).¹ See **Exhibit 1**.

The parties agreed to seek issuance in the SRBA of partial decrees and orders to implement the proposed settlement, and to seek dismissal of these appeals and cross-appeals with instructions to the District Court to vacate the orders that are the subject of the appeals and cross-appeals if the proposed partial decrees and orders were issued. The SRBA district court has issued the partial decrees and order proposed by the Stipulation.

The parties to this appeal therefore jointly move this Court to dismiss this appeal with prejudice, with each party to bear its own costs and fees, and with instructions to the District Court to vacate to vacate its *Memorandum Decision and Order* (Sep. 1, 2016) and *Order Denying Rehearing* (Nov. 14, 2016,) entered in the case underlying this appeal, Twin County Case No.

¹ Including but not limited to the disputes arising in the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; the administrative and judicial proceedings underlying these same appeals and cross-appeals; and Snake River Basin Adjudication (“SRBA”) subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

STIPULATION ATTACHMENT G -- MOTION TO DISMISS APPEALS

CV-WA-2015-21376 (Consolidated Ada County Case No. CV-WA-2015-21391).

[SIGNATURE BLOCK AND CERTIFICATE OF SERVICE]

JOINT MOTION TO DISMISS APPEAL - 4

STIPULATION ATTACHMENT G – MOTION TO DISMISS APPEALS

Exhibit 1

(Copy of “Stipulation” and Attachments)

JOINT MOTION TO DISMISS APPEAL - 5

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June 2020, the foregoing, together with any appendices or exhibits, was filed, served, and copied as shown below.

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Christopher H. Meyer