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**MAY 06 2020**

**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 CORRECTED SUBMISSION  
CONCERNING CONDITION 908**

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## EXPLANATION OF CORRECTIONS

On 9/4/2019, Nick Miller of the Idaho Department of Water Resources (“IDWR”) requested preparation of a staff memo regarding what are commonly known as Conditions 907 and 908. On 10/30/2019, SUEZ Water Idaho Inc. (“SUEZ”) submitted *SUEZ’s Submission Concerning Condition 908* (“*908 Submission*”) explaining SUEZ’s thinking on Condition 908. On 1/31/2020, Angie Grimm and Matt Anders of IDWR issued the requested memo (“*Staff Memo*”). The *Staff Memo*, by the way, did not address the issues raised in the *908 Submission*. Those issues remain before IDWR and are at the core of SUEZ’s protest to this application.

During the course of settlement discussions, SUEZ discovered minor errors in its *908 Submission*. The purpose of today’s filing is to correct those errors. Except for the first bulleted point below, the corrections are all within Appendix A and consist of the following:

- The first paragraph in Section 1 of the Discussion on page 10 was updated to reflect the issuance of Elmore County’s permit no. 63-34348 with Condition 908.
- Table A on page 23 of Appendix A has been replaced. The only substantive changes are the following: (1) The addition of the “Purpose” row that describes the purpose of the right in a few words. (2) Addition of the word “surface” in the first subordination of Refill 2 (consistent with the partial decree). (3) Correction of an error in the second subordination for Refill 2. (It previously said “junior to” 5/1/2014 instead of “prior to” 5/1/2014.) (4) A parenthetical explaining the effect of the “carve-outs” in the left column of that row. (5) Addition of the word “surface” in the first carve-out to Refill 1 (consistent with the partial decree). (6) The addition of a reference to Idaho Code § 42-115 in the first carve-out to Refill 1. (7) The reference to “ground water recharge” in the second carve-out to Refill 1 was changed to “managed ground water recharge” to conform to the language of the partial decree.
- The same change (from “ground water recharge” to “managed ground water recharge”) was made to all such references in the text.
- On page 25 of Appendix A, a reference to 4/19/2019 was corrected to read 4/15/2019.
- Footnote 27 on page 28 was expanded to provide a more complete explanation how Refill 1 and 2 operate vis-à-vis ground and surface rights.

- A paragraph was added to the Overview of H.B. 1 on page 28 explaining that Idaho Code § 42-115 controls in the event of any inconsistency between the statute and the first carve-out in Refill 1.
- Also on page 28, an incorrect reference to Idaho Code § 42-215 was corrected to read 42-115.
- Various internal cross-references within the document (*e.g.*, to page numbers) were updated.

## INTRODUCTION AND SUMMARY

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 commonly referred to as Conditions 907 and 908. (A copy of the *Memo Request* is set out in Appendix B at page 36. 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 this permit application by Micron Technology, Inc. (“Micron”). In this submission, Protestant SUEZ Water Idaho Inc. (“SUEZ”) offers its perspective on Condition 908, which has been the focal point of SUEZ’s protest of Micron’s permit application.<sup>1</sup>

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.”). 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 4 at 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. IDWR imposed the condition on two other

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<sup>1</sup> SUEZ also has questions and concerns with respect to Condition 907, some of which may be addressed in the forthcoming staff memorandum on that condition.

licenses, but has not included it as a standard condition on all new Boise River appropriations.

(See footnote 6 at page 10.)

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. At one time, a water right applicant might 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.

More importantly, the circumstances leading to Condition 908 have been changed fundamentally by the settlement of the Refill Litigation,<sup>2</sup> and the condition is no longer

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<sup>2</sup> 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,

appropriate, even if agreed to by an applicant. 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. These original water rights are referred to as the “Base Rights.” The conditions and extent of this refill are governed by two carefully crafted 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). Copies of the partial decrees for these rights are attached hereto as Appendix C and Appendix D (at pages 38 and 41, respectively).

Condition 908 has the effect of prohibiting diversions during a period of time determined and controlled by the federal government (when the Boise River is “on flood release”).<sup>3</sup> 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 existing water rights, but not to newly

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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) (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.

<sup>3</sup> What “on flood release” means is subject to debate. See sections I and VI, below. Under any interpretation, decisions of the federal government set the boundaries of the time period.



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).

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 would be to prevent exercise of the new permit 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). In other words, the sole purpose of adding Condition 908 is to give the Bureau more than it is entitled to under Refill 1 and Refill 2.

The Department should not agree to this circumvention of the Refill Settlement, even if the applicant does not oppose the condition. The State fought hard in the Refill Litigation to avoid 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 allow circumvention of those sideboards by continuing to impose the obsolete Condition 908.

In any event, if the condition is nonetheless imposed, the Department must make clear that its imposition is based on the applicant's acquiescence, and not as a standard condition that may be viewed as an administrative precedent.

## 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 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, Pioneer Irrigation District, and Settlers Irrigation District).<sup>4</sup> 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 permit issued since no. 63-31409.<sup>5</sup> 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.<sup>6</sup>

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; and (2) during licensing where IDWR

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

found express statements by the applicants demonstrating that they expected to be able to divert water only during flood control operations. These circumstances do not support characterizing it as a “standard” condition that should be included on all new Boise River water rights.<sup>7</sup>

## **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. SUEZ understands that the Department has never actually administered Condition 908 because its meaning was not clear.<sup>8</sup>

Some have contended that the condition authorizes unlimited refill of federal reservoirs under the Base Rights’ priority.<sup>9</sup> 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

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<sup>7</sup> According to memoranda in IDWR’s files, in 2013 IDWR “instructed [its] staff to issue permits for new appropriations of surface water and ground water upstream from Star with the [908 condition].” *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).

<sup>8</sup> 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).

<sup>9</sup> 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’”).

and continues either through July 31 or the date of allocation (the date of maximum fill), whichever is earlier.<sup>10</sup> 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 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.<sup>11</sup>

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 date 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.

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<sup>10</sup> The "date of allocation" is a term of art used by IDWR that corresponds to the date when there is not enough inflow 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.

<sup>11</sup> 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.

**III. CONDITION 908 IS CONTRARY TO IDAHO LAW, WHICH RECOGNIZES THE RIGHT TO APPROPRIATE 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 Department in accordance with their priority absent express statutory or constitutional authority to the contrary.<sup>12</sup>

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.

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<sup>12</sup> 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.”).

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 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 12 at page 13. 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, 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. This is contrary to Idaho law and, as discussed below, completely resolved by 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, 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. Additional condition language in 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 sets out in Appendix A at page 19 a brief explanation of this extraordinarily complex dispute spanning more than 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.<sup>13</sup>

The Refill Settlement authorized two new “Late Claim”<sup>14</sup> storage rights (*i.e.*, 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 at page 24.)

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 (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.

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<sup>13</sup> Helpful, but invariably incomplete, summaries of the Refill Litigation are found in some of the decisions set out in footnote 2 at page 5. But there appears to be no publicly available summary and explanation of the Refill Settlement itself.

<sup>14</sup> The terms “Base Rights” and “Late Claims” are explained in footnote 16 at page 17.

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. Thus the imposition of Condition 908 on new appropriations is contrary to the Refill Settlement.

Accordingly, SUEZ believes it should no longer be included on 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. 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 acquiescence, and not as a standard condition that may be viewed as an administrative precedent.

Better yet, 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. If anything at all needs to be said in new permits about flood control and refill, it should suffice to note that new water rights are subject to the Refill 1 and Refill 2 rights.



**VI. 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)).

This need to address the administration of Condition 908 is reflected in the *Memo Request*. It asks IDWR staff to address "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." *Memo Request* at 1 (emphasis added).

Concerning this point, as discussed in Section II above, SUEZ respectfully recommends that the Boise River be considered "on flood release" from January 1 through July 31 or the date 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. The Department should not impose Condition 908 on any new

permits or licenses, but should instead develop one or more new conditions that recognize the existence of the Refill 1 and Refill 2 rights.

Respectfully submitted this 4th day of May, 2020.

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## Appendix A SUMMARY OF REFILL LITIGATION AND SETTLEMENT

### I. THE REFILL LITIGATION

The dispute over refill dates to 2007.<sup>15</sup> It centered mainly on IDWR's accounting methodology for water rights associated with federal on-stream reservoirs. The accounting methodology matters because Idaho, like most western states, allows only one "fill" of a storage water right under priority (unless the right expressly provides for additional fill).<sup>16</sup> The core question was whether water vacated<sup>17</sup> for flood control purposes counts (aka, accrues) toward fill (*i.e.*, satisfaction of the water right).

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<sup>15</sup> The origin of the Refill Litigation was objections filed on April 19, 2007 in the SRBA by the Bureau to a recommendation filed by the Idaho Department of Water Resources ("IDWR") on two Bureau storage rights in the Snake River Basin (01-2064 and 01-2068) limiting them to a single fill. In its objection, the Bureau asked that a "remark" be added to its water right authorizing it to refill its Snake River projects under right of priority. IDWR declined to do so, instead offering an alternative remark authorizing free-river refill. See discussion in *In re SRBA Case No. 39576, Basin-Wide Issue 17, Subcase No. 00-91017*, Memorandum Decision at page 4 (4th Dist. Idaho Mar. 20, 2013) (Wildman, J.). Irrigators filed a petition to designate a so-called "basin-wide issue." See discussion in footnote 21 at page 19. In 2015, parties resolved the refill dispute in the Upper Snake by the Bureau securing additional junior water rights authorizing refill. In 2019, a similar result was reached in the Boise River Basin.

<sup>16</sup> For convenience, we refer to the primary storage right(s) associated with a reservoir or system of reservoirs authorizing the initial fill as the "Base Right(s)." The Base Rights are distinguished from any additional water right(s) (*e.g.*, the "Late Claims" that resulted in Refill 1 and Refill 2) authorizing a second fill of the reservoir(s) under right of priority.

The Bureau's Base Rights for Basin 63 (Boise River Basin) are Nos. 63-303, 63-3613, 63-3614, and 63-3618. The Basin 63 Late Claims are Nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. No. 63-33734 was split into 63-33734A and 63-33734B to become Refill 1 and Refill 2. Except for Refill 1 and Refill 2, all Basin 63 Late Claims were disallowed by the SRBA Court on 7/19/2019 pursuant to the Refill Settlement. The Basin 65 (Payette River Basin) Base Rights are Nos. 65-2927A, 65-2927B, 65-2917, and 65-9483. The Late Claims for Basin 65 are Nos. 65-23531 and 65-23532. The Basin 65 Late Claims were disallowed on *res judicata* grounds.

<sup>17</sup> We employ the term "vacated" to describe space in a reservoir that becomes empty when stored water is released prior to the irrigation season for flood control purposes. In addition, the term "vacated" includes space that is kept empty when water that could have been lawfully stored is bypassed for flood control purposes (*i.e.*, water is passed through the reservoir without being physically stored). Strictly speaking, "vacate" refers to the creation or maintenance of space in the reservoir. Thus, one vacates space by releasing water. However, for convenience and brevity, we also speak of vacating water in order to create or maintain storage space. Thus, "vacated" water includes both releases of previously stored water and bypass of water that is never physically stored.

A related question concerns the entitlement of a storage right holder to refill under so-called “free river” conditions. This refers to storage that occurs not under right of priority and only when there is sufficient water to allow both refill of reservoirs and satisfaction of all other rights then in priority. IDWR (like other western states) has allowed such free-river refill under longstanding administrative practice.

For decades, IDWR’s Boise River accounting system has accrued all “storable inflow” to the water rights associated with federal on-stream storage reservoirs.<sup>18</sup> Storable inflow is all water entering an on-stream reservoir that the storage right holder is legally authorized to store. In other words, all water entering the reservoir is storable, and counts toward the first “fill” of the water right, unless the reservoir operator is legally obligated to bypass the water to satisfy downstream seniors. As a practical matter, during spring high-flow conditions, almost all water is storable inflow.

This accounting method is referred to as “paper fill” because the water right might be filled or satisfied on paper (and therefore no longer “in priority”) despite the fact the reservoir is not physically full by virtue of water being vacated for flood control. Under IDWR’s longstanding practice, the storage right holder who has reached “paper fill” is nonetheless authorized to refill the reservoir during “free river” conditions with excess water that other right holders do not need.

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<sup>18</sup> The accounting system for the Boise River was adopted by IDWR in 1986. *In the Matter of Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 63*, Amended Final Order at p. 19 ¶ 40 and p. 42 ¶ 131 (IDWR Oct. 15, 2015) (Spackman, Director).

In the Refill Litigation, irrigators<sup>19</sup> acknowledged that the Bureau was entitled to only a single fill of the Base Rights under priority. But they vigorously challenged IDWR's paper fill accounting mythology.<sup>20</sup> Specifically, they contended that water vacated for flood control purposes should not count toward the fill of the Base Rights. In other words, they contended that they could vacate water, and then top off (*i.e.*, refill) the reservoirs under the Base Rights' priority (to the detriment of other water users) without exceeding the single fill authorized under the Base Rights. Put yet another way, they contended that their Base Rights are not filled (*i.e.*, legally satisfied) until the reservoirs are physically filled again following evacuation for flood control. SUEZ, IDWR, and the State of Idaho argued that this would equate to an unlimited right to re-fill under right of priority, effectively eviscerating the Base Rights' quantity elements.

The irrigators also expressed doubt as to whether they could rely on IDWR's historical practice allowing "free river" refill, which is not embodied in a formal water right. (Of course, they would not need free-river refill if, as they contended, they had unlimited priority-based refill under the Base Rights.)

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<sup>19</sup> IDWR was challenged by the Bureau and by various irrigation entities holding contract entitlements to stored water. For convenience, they are referred to here, collectively, as irrigators.

<sup>20</sup> The irrigators challenged IDWR's paper fill methodology because they feared the federal reservoirs would be left partially empty if water that counted toward fill of the water right was vacated for flood control. As a factual matter, failure to refill the Boise River's federal reservoirs after vacating water for flood control is exceedingly rare. Evidence provided by IDWR staff in the Basin 63 contested case in the Refill Litigation showed that flood releases have resulted in a failure to fill Boise River reservoirs in only one year (1989) since IDWR's accounting system was adopted. In that year, the three reservoirs failed to physically fill due to flood control by more than the 60,000 acre-feet of "cushion" provided by the Bureau, and therefore the Lucky Peak spaceholders received less than full allocations. However, even though not all of the Lucky Peak storage contracts were completely filled in 1989, the record shows that no spaceholders suffered any shortage that year, as evidenced by the fact that there was substantial Lucky Peak carryover—that is, storage water still unused—at the end of the 1989 irrigation season.

Nevertheless, irrigators pursued the Refill Litigation over concerns that conditions could change in the future as a result of new juniors coming on the system and/or changes in reservoir operations providing more aggressive flood protection.

The irrigators could have addressed their concerns with the paper-fill accounting system by applying for a new, junior storage right specifically authorizing refill under priority. Such a second-fill right would be senior to all future water rights, thereby protecting the status quo. They also could have sought formal confirmation of their right to free river refill.

Instead, the Basin 63 irrigators pursued a two-pronged litigation approach in which they not only challenged IDWR's accounting system,<sup>21</sup> but also filed so-called "Late Claims" for refill rights in the SRBA seeking pre-1971 priority rights for refill based on alleged diversion and beneficial use. Somewhat ironically, they argued that their own Late Claims were unnecessary because they had the right of priority refill under the existing decreed Base Rights. If they prevailed under either theory—that they were entitled to priority refill under either the Base

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<sup>21</sup> Initially, the irrigators sought a ruling on "Basin-Wide Issue No. 17" in the SRBA. (Basin-wide issues are special proceedings within the general adjudication addressing broad legal issues affecting multiple water rights throughout the basin.) Basin-Wide Issue No. 17 was filed on 6/8/2012. On 9/21/2012, the SRBA Court designated basin-wide issue number 17, framing the issue: "Does Idaho law require a remark authorizing storage rights to 'refill,' under priority, space vacated for flood control?" (Emphasis original. This was the same wording as urged by the irrigators, except that Judge Wildman added the words "under priority.") Were it not for the 20-word limit in Administrative Order 1, this abstrusely worded question might have been presented more clearly as: "In the absence of a remark expressly authorizing it to do so, is a storage right holder allowed to store more water, under priority, than the annual volume stated on the face of its water right?"

This question was posed in response to the Bureau's request in 2007 for a "remark" authorizing refill under priority for its Snake River storage rights (see footnote 15 at page 13). Essentially, the irrigators asked the SRBA Court to declare that no remark is necessary, because an unlimited right to refill under priority is inherent in their Base Rights.

The SRBA Court issued its decision on Basin-Wide 17 on 3/20/2013. The SRBA Court only partially answered the question. Judge Wildman ruled that only one fill is allowed under priority. But he declined to address what water counts toward the first fill, that being a question of administration not suited for a basin-wide issue.

Seven months later, on 10/24/2013, IDWR initiated a contested case on its accounting system. The contested case was then stayed pending appeal of Judge Wildman's Basin-Wide 17 ruling.

On appeal of Judge Wildman's decision, the Idaho Supreme Court essentially ruled the question of what water accrued to the storage right was premature because it "was not a question anyone appears to have wanted answered." *A&B Irrigation Dist. v. State* ("BW-17"), 157 Idaho 385, 392, 336 P.3d 792, 799 (2014) (Burdick, C.J.). In effect, the Court kicked the matter back to IDWR.

As noted, the IDWR Director had initiated (and then stayed) an administrative proceeding (aka contested case) to address the very accounting question that the Idaho Supreme Court ruled was within the Director's discretion to decide. The stay was lifted, and the Director ultimately upheld his own accounting system, giving rise to judicial review to district court (which upheld his ruling) and appeals to the Idaho Supreme Court. It is these appeals that were resolved by the settlement, and which in turn gave rise to H.B. 1 discussed below in section II.D at page 26.

Rights or the Late Claims—the Bureau would have the right to refill under an earlier priority date than could be achieved by obtaining a new appropriation for refill.

## **II. THE REFILL SETTLEMENT**

### **A. Overview of the settlement**

In the summer of 2018, after years of litigation and one trip to the Idaho Supreme Court<sup>22</sup> and on the cusp of oral arguments on the second appeal to the Idaho Supreme Court, House Speaker Bedke led a series of settlement negotiations that resulted in a settlement among the Bureau, the irrigators, IDWR, the State of Idaho, and SUEZ.

Ultimately, as explained below, the settlement asked the SRBA Court to decree two new water rights based on (but substantially different than) the irrigators' Late Claims. Also, it put to rest debate over IDWR's "paper fill" accounting system, which remains intact.

In a nutshell, the Refill Settlement resulted in the federal government obtaining two new water rights authorizing the refill of reservoir space that is vacated for flood control. These rights provide the Bureau with express legal authority to store additional quantities of water beyond the Base Rights' volume limits. They are commonly referred to as Refill 1 and Refill 2. In brief, they provide as follows:

- **Refill 1:** Except for three specific "carve-outs," Refill 1 is a "free river" water right. This means it authorizes diversion of water for refill without limit, but not under priority (except for three carve-outs). In other words, it may be exercised only when doing so does not impair any other right, present or future.

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<sup>22</sup> The Idaho Supreme Court decision is discussed in footnote 21 at page 19.

- **Refill 2:** In contrast, Refill 2 is a priority-based right to refill. However, Refill 2 is for a fixed quantity and may be exercised under priority only against post-2014 water rights.

A summary of the rights is set out in Table A below, followed by detailed discussions of each in subsections that follow.

<b>Table A: Summary of Settlement Rights</b>		
	<b>Refill 1</b>	<b>Refill 2</b>
<b>Purpose</b>	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.
<b>May be exercised under priority?</b>	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).
<b>Subordination:</b>	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.
<b>Carve-outs (which eliminate the subordination and allow the right to be exercised under priority):</b>	(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.
<b>Priority date</b>	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.
<b>Quantity</b>	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



**B. Refill 1 (No. 63-33734A)**

The Refill 1 right is formally known as water right no. 63-33734A.<sup>23</sup> The partial decree is set out in Appendix C at page 38.

As originally conceived, Refill 1 was meant to memorialize and expressly authorize IDWR's longstanding practice of authorizing storage right holders to store additional water (beyond the first paper fill) for refill purposes under "free river" conditions. This was deemed necessary, because, in the Refill Litigation, irrigators questioned whether this administrative practice was authorized and, even if so, whether the Bureau could rely on a mere practice.

Refill 1's quantity reflects the largest recorded inflows into the reservoirs (*i.e.*, the entire river): 3,672,732 AF/year. In other words, it is an unlimited right to refill under free river conditions.

The starting point in crafting Refill 1 was simple. To mimic the "free-river" concept, Refill 1 was subordinated to all existing and future water rights. This would have allowed the storage of water whenever it is available and no one else needs it. If it had stopped here (as proposed by the State in the settlement negotiations), this would be a true "free river" water right, simply formalizing (in the form of an actual water right) IDWR's practice of allowing free river refill.

However, in the settlement negotiations, the irrigators secured three exceptions or "carve outs" to Refill 1's subordination. The carve-outs give Refill 1 the ability to exercise its priority against three classes of water rights: (1) surface water storage projects greater than 1,000 acre-

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<sup>23</sup> Refill 1 was set out in two forms in the stipulation because, at the time, it was not known whether H.B. 1 would be enacted. One version omitted the carve-out for new surface water projects (which required authorization under H.B. 1). H.B. 1 is discussed in Section II.D at page 26 below.

feet issued after 4/15/2019, (2) managed ground water recharge rights issued after 4/15/2019, and (3) all hydropower rights.<sup>24</sup> The carve-outs convert Refill 1 into an unsubordinated priority-based water right vis-à-vis the carved-out classes of rights.

Refill 1 has a relatively early priority date, 9/30/1965 (based on the year the Bureau asserted that the largest inflow into the reservoir system occurred prior to 1971, after which date new water rights could not be established without going through an application and permitting process with IDWR<sup>25</sup>). However, the priority date is functionally eliminated through subordination (except for the three carve-outs).

### **C. Refill 2 (No. 63-33734B)**

Refill 2 is formally known as water right no. 63-33734B. The partial decree is set out in Appendix D at page 41.

The idea behind Refill 2 is that it can be exercised in priority against post-settlement water rights, which the irrigators feared might take substantial quantities of the unappropriated water historically available for refill (thus rendering free-river refill of less value). Refill 2

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<sup>24</sup> The carve-outs appear in a remark set out under the element of the right setting the priority date. The remark reads: “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.”

The phrasing is odd: the first carve-out (for surface storage) is set out in a different sentence than the other two carve-outs. This structure reflects the State’s view that the first carve out is based on a formal statutory subordination (enacted in H.B. 1), while the others are based on administrative subordination practices implementing other constitutional and statutory directives that are not expressly framed as subordinations. In any event, the distinction is inconsequential. All three carve-outs have the same effect—to eliminate the subordination, thus causing Refill 1 to operate under right of priority, with respect to each carve-out.

<sup>25</sup> For decades, the permitting/licensing process was optional in Idaho, meaning that a water right could be perfected simply through diversion to beneficial use. In 1963, it was made mandatory for ground water rights (except for single family domestic or small stockwater uses). 1963 Idaho Sess. Laws, ch. 216 (codified at Idaho Code § 42-229). In 1970, it 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 1 is based on pre-1971 diversion and beneficial use.

accomplishes much the same thing as filing a new application for a “second fill” right because the subordinations effectively convert it to a 2014-priority right.

Although Refill 2 is the product of settling litigation over refill due to flood control, its priority and quantity elements have nothing to do with flood control. Instead, Refill 2’s priority and quantity elements are based on a 1973 amendment to Idaho’s water code to allow storage of up to five acre-feet per acre of irrigated land (1973 Idaho Sess. Laws, ch. 184, § 1 (amending Idaho Code § 42-202(3))). In settlement negotiations, the State contended that this amendment provided the necessary legal mechanism to support the irrigators’ Late Claim for additional storage water to be used on the same lands as the Base Rights. Accordingly, Refill 2 has a 3/16/1973 priority date, which is the date Idaho’s water code was amended to add the five acre-foot provision.<sup>26</sup>

However, Refill 2’s priority date is sharply undercut by two subordinations that effectively convert it to a 2014 priority. The parties agreed that Refill 2 will be subordinated to all existing surface water right permits and licenses (as identified in an agreed-upon list whose

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<sup>26</sup> Unlike Refill 1, 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.

most recent priority date is 1/30/2014) and to all small (less than 0.1 cfs) surface water rights with priority dates predating May 1, 2014.<sup>27</sup>

Refill 2's quantity element (587,056 AF/year) is the amount of additional water that could be stored under the amended statute's five acre-foot per acre authorization mentioned above, beyond the quantities authorized to be stored under the Base Rights.

This is a generous quantity in light of the fact that water refilling the reservoirs accrues to Refill 1 during free river conditions (*i.e.*, during most of the spring high water period). Refill 2 does not kick in unless priority is required against rights not subject to the Refill 1 carve-outs. Thus, as a practical matter, Refill 2 probably will only be exercised to top off the reservoirs as the date of allocation approaches near the end of the refill season.

**D. H.B. 1 (Idaho Code § 42-115)**

**(1) Overview of H.B. 1**

H.B. 1 was developed by the settling parties to implement one of the three carve-outs under Refill 1. Refill 2 required no implementing legislation.

As noted, the idea behind Refill 1 is to formalize (in the form of a water right) the Department's administrative practice of allowing free river refill, *i.e.*, refill when no other water right would be injured by the refill. The carve-outs mean that some water rights would be disadvantaged by Refill 1 (because the subordination does not apply to them).

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<sup>27</sup> Refill 1 is subordinated to all Basin 63 water rights (except for carve-outs) including ground water rights). Unlike Refill 1, Refill 2 is subordinated only to post-settlement surface water rights. Thus, in the event of a conjunctive management call against ground water users, the federal projects, in theory, could seek curtailment of ground water alleged to injure the Base Rights, the Refill 2 right. This is of little practical consequence, however. The vast majority of ground water rights are located far downstream from the federal reservoirs. Consequently, their pumping has no measurable impact on surface flows into the reservoirs. In theory, a conjunctive management call could be made under Refill 1 against "carved-out" ground water rights. However, it is highly improbable any of the carve-outs would be ground water based.

Under the prior appropriation doctrine, all water rights are accorded equal dignity unless a statute or the constitution expressly provides otherwise. Accordingly, in the settlement discussions, the State took the position that the first two carve-outs (managed ground water recharge and hydropower) were supported by existing legal authority, but that there was no authority to subject large new storage rights to priority-based refill under Refill 1. Accordingly, the settlement parties agreed to support new legislation to authorize the carve-out for new storage rights. That legislation is H.B. 1 (set out in Appendix E at page 54).

The subordinations and carve-outs in Refill 1 and Refill 2 are limited to the Boise River basin (Basin 63). In contrast, H.B. 1 applies statewide. Thus, new storage projects state-wide are affected by the subordination in H.B. 1.

The language of the first carve-out is simpler and broader than the language of section 42-115. For example, the first carve-out applies year-round, but the subordination in section 42-115 applies only “during and following flood control operations until the date of allocation.” To the extent of any such difference, the more precise and narrower language of section 42-115 must control, given that it provided the necessary authority for the carve-out.

In the following subsections, the bill language is parsed and explained. Each subsection deals with a particular phrase within section 42-115, which is underlined.

**(2) New storage projects greater than 1,000 acre-feet**

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.

Idaho Code § 42-115 (emphasis supplied).

This introductory phrase sets the basic scope of the bill, which applies only to large new surface water storage projects.

**(3) Existing on-stream storage for flood control**

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.

Idaho Code § 42-115 (emphasis supplied).

The bill provides protection to storage projects that are (1) existing, (2) on-stream, and (3) operated for storage and flood control.

The first two (“existing” and “on-stream”) are redundant with other language in the bill discussed below. This is the only reference, however, to “storage and flood control.”

**(4) Subordination**

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.

Idaho Code § 42-115 (emphasis supplied).

The subordination provision underlined above is the guts of H.B. 1. It makes all new large storage rights subordinate to existing rights to capture and retain storage water in on-stream reservoirs following flood control operations. One might ask, why is that necessary? Aren't new rights always "subordinate" to existing rights by virtue of their junior priority dates? Yes, that is ordinarily the case.

As noted above, however, the State's view was that Refill 1 is not an ordinary beneficial use right, because it is premised on operation under free river conditions. To the extent Refill 1 is allowed to burden junior water rights in the carve-out categories, those categories of rights must already be burdened by legislation giving them a second-class status. H.B. 1 accomplishes that for large new storage projects. (Again, it was felt that existing law provides such status for the other carve-outs.)

Thus, the thrust of this statute is that IDWR must subordinate certain storage rights to certain existing uses (as described below).

It bears repeating that, while H.B. 1 was motivated by the desire of the settling parties to justify the carve-out in Refill 1 applicable within Basin 63, the subordination in H.B. 1 applies statewide to the detriment of all large, new storage projects.

#### **(5) Permits and licenses**

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.

Idaho Code § 42-115 (emphasis supplied).

Water right “permits and licenses” means that IDWR must subordinate (a) new applications for water rights that are yet to be approved (*i.e.*, that are not yet “permits”), and (b) permits that will ripen into licenses if proved up.

**(6) 1,000 acre-feet**

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.

Idaho Code § 42-115 (emphasis supplied).

The 1,000 acre-foot threshold is an arbitrary limit that is intended to exclude small storage projects that would not measurably interfere with refill of the large federal reservoirs at issue in the Refill Litigation. Thus, for instance, new water rights for small ponds in new residential developments for aesthetic purposes or lawn irrigation water would not be subordinated to refill of existing on-stream reservoirs.

**(7) Surface water**

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.

Idaho Code § 42-115 (emphasis supplied).

The “surface water” text excludes storage of ground water from application of this statute. However, this arguably does not exclude underground storage of surface water (*i.e.*, managed ground water recharge).

**(8) After the effective date**

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.

Idaho Code § 42-115 (emphasis supplied).

The effective date is February 13, 2019 (the statute’s date of passage and approval) because it was deemed an “emergency.”

**(9) Capture and retention**

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.

Idaho Code § 42-115 (emphasis supplied).

“Capture and retention” is another way of saying physical fill or refill of the reservoirs, as opposed to mere satisfaction of a water right on paper (aka “paper fill”) as determined by IDWR’s accounting system. Thus, H.B. 1 dovetails with Refill 1, which authorizes a second fill of the paper right in order to physically fill the federal reservoirs.

**(10) Existing on-stream reservoirs**

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.

Idaho Code § 42-115 (emphasis supplied).

“Existing on-stream reservoirs” presumably is intended to mean on-stream reservoirs that exist at the time IDWR imposes the subordination required by H.B. 1 on the new permit or license. In other words, this subordination is not limited to on-stream reservoirs existing when this statute became effective, but protects any reservoirs that exist when a future permit or license made subject to subordination.

The statute does not define “on-stream” reservoirs. This is generally understood to refer to reservoirs in which a dam is placed on a natural stream to create a reservoir, in contrast to an off-stream reservoir (such as Lake Lowell near Nampa, Idaho) in which water is diverted from a natural stream and carried to a remote location for storage.

**(11) During flood control operations**

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.

Idaho Code § 42-115 (emphasis supplied).

“During and following flood control operations” is intended to clarify that this subordination requirement does not allow physical “refill” of reservoirs for any reason other than refill necessitated by flood control operations.

**(12) Date of allocation**

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.

Idaho Code § 42-115 (emphasis supplied).

The “date of allocation” is a term of art used by IDWR that corresponds to the date when there is not enough inflow to satisfy all water rights that are in priority and hence no water can be stored in reservoirs whose storage rights are no longer in priority. 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.

## Appendix B REQUEST FOR STAFF MEMORANDUM (“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 C PARTIAL DECREE FOR "REFILL 1" (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

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. Wildman  
Presiding Judge of the  
Snake River Basin Adjudication



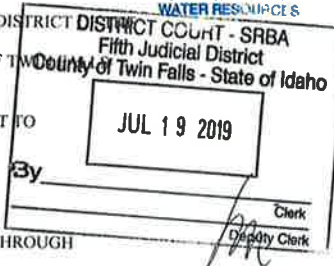
**Appendix D PARTIAL DECREE FOR "REFILL 2" (No. 63-33734B)**

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

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:

<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.

SRBA - PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)  
Water Right 63-337348

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.

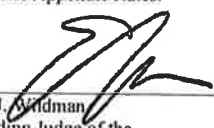
  
Eric J. Waldman  
Presiding Judge of the  
Snake River Basin Adjudication

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	596166	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	596141	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	63-91409	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

Exhibit A

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

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	63-15963	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	378895	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

Exhibit A

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	378889	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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Subordination Summary - Ground Water Rights - 4/21/18

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	378890	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	377249	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	379184	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



Exhibit A

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	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

Exhibit A

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

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

## Exhibit A

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

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	63-11018	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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Subordination Summary - Ground Water Rights - 4/21/18

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	968210	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	3/29/2001	556578	0.14
339	63-31311	8/27/2001	559183	0.04
340	63-31503	5/28/2002	857845	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

**Exhibit A**

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

Row #	WRN	Priority	Right ID	Diversion
345	63-33933	9/25/2008	671262	0.02
346	63-33921	12/21/2009	649729	0.06
347	63-33379	5/17/2010	639436	0.04
348	63-33592	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 E H.B. 1 (CODIFIED AT IDAHO CODE § 40-115)

18

IDAHO SESSION LAWS

C. 15 2019

### CHAPTER 15 (H.B. No. 57)

#### AN ACT

RELATING TO THE APPROPRIATION TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 2019; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 2019; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 274, Laws of 2018, and any other appropriation provided by law, there is hereby appropriated to the Department of Fish and Game for the Fisheries Program \$1,825,100 from the Fish and Game (Other) Fund to be expended for operating expenditures for the period July 1, 2018, through June 30, 2019, for the purpose of habitat improvement projects.

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.

Approved February 12, 2019

### CHAPTER 16 (H.B. No. 1)

#### 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.

Approved February 13, 2019

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May 2020, the foregoing, together with any appendices or exhibits, was filed, served, and copied as shown below.

#### DOCUMENT FILED:

Western Regional Office  
Idaho Department of Water Resources  
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Boise, ID 83705-5082

<input checked="" type="checkbox"/>	U. S. Mail
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May 4, 2020

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WATER RESOURCES  
WESTERN REGION

Via U.S. Mail

Clerk

Idaho Department of Water Resources  
2735 W Airport Way  
Boise, ID 83705

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

Dear Clerk:

Enclosed please find the original *Suez's Corrected Submission Concerning Condition 908* for filing in the above referenced matter. I have also provided an additional copy for you to conform and return to us in the self-addressed stamped envelope at your earliest convenience.

Please contact me should you have any questions or concerns.

Best regards,

/s/ John Bunn

John Bunn

Assistant to Christopher H. Meyer and  
Michael P. Lawrence

jmb  
Enclosures