

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

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| IN THE MATTER OF ACCOUNTING )<br>FOR DISTRIBUTION OF WATER )<br>TO THE FEDERAL ON-STREAM )<br>RESERVOIRS IN WATER )<br>DISTRICT 01 )<br>_____ ) | <b>ORDER LIFTING STAY AND<br/>NOTICE OF STATUS<br/>CONFERENCE</b> |
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On December 27, 2013, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) signed an order staying the above referenced matter pending a decision by the Idaho Supreme Court in the case involving Basin-Wide Issue No. 17. The Idaho Supreme Court issued its decision in that case on August 4, 2014. *In re SRBA, Case No. 39576, Subcase 00–91017 (Basin–Wide Issue 17—Does Idaho Law Require a Remark Authorizing Storage Rights to ‘Refill’, Under Priority, Space Vacated for Flood Control)*, Nos. 40974 and 40975, 2014 WL 3810591 (Idaho Aug. 4, 2014). The decision affirms the Director’s authority to determine how water is counted or credited toward the fill of a water right. The Court expressly rejected the argument raised by the Surface Water Coalition and the Boise Project Board of Control that the Director lacked the statutory authority to determine when a water right is satisfied. The Court stated:

Idaho Code section 42–602 gives the Director broad powers to direct and control distribution of water from all natural water sources within water districts. That statute gives the Director a clear legal duty to distribute water. However, the details of the performance of the duty are left to the director's discretion. Therefore, from the statute's plain language, as long as the Director distributes water in accordance with prior appropriation, he meets his clear legal duty. Details are left to the Director.

*In re SRBA* at 7 (citations and quotations omitted).

The Court went on to discuss cases that recognize the Director’s discretion to direct and control the administration of water, concluding:

Somewhere between the absolute right to use a decreed water right and an obligation not to waste it and to protect the public's interest in this valuable commodity, lies an area for the exercise of discretion by the Director. Thus, the Director's clear duty to act means that the Director uses his information and discretion to provide each user the water it is decreed. And implicit in providing

each user its decreed water would be determining when the decree is filled or satisfied.

*Id.* at 8 (citations and quotations omitted).

The Snake River Basin Adjudication (“SRBA”) District Court recently held a status conference on the refill beneficial use claims still pending in the SRBA.<sup>1</sup> The parties at the conference asked the Court to stay processing those claims pending a decision by the Director in this contested case proceeding and the parallel contested case proceeding commenced in Basin 63. Given the Idaho Supreme Court’s decision on Basin-Wide Issue 17 and the parties’ request to stay the beneficial use claims pending before the SRBA District Court, the stay in this matter should be lifted and a status conference should be scheduled. The Director will also separately request a memorandum from staff pursuant to Rule 602 of the Department’s rules of procedure (IDAPA 37.01.01.602) explaining: (1) how and why water is counted or credited to the water rights for reservoirs in Basin 01 pursuant to the existing accounting methods and procedures; and (2) the origin, adoption, and development of the existing accounting methods and procedures in Basin 01.

## ORDER

IT IS THEREFORE ORDERED that the December 27, 2013, stay entered in the contested matter referred to as “In the Matter of Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 01” is lifted and a Status Conference shall be scheduled.

## NOTICE OF STATUS CONFERENCE

The Director hereby notifies the parties that a status conference will be held on **October 6, 2014, at 2:00 p.m.** at: **1950 Airport Way, Pocatello, Idaho**. All parties to the matter must be represented at the status conference in person.

The status conference will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the Department upon request.

The conference will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the conference, please inform the Department no later than five (5) days prior to the conference. Inquiries for special accommodations should be directed to

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<sup>1</sup> The SRBA subcase numbers for the beneficial use claims are as follows: 01-10614, 01-10615, 01-10616, 01-10617, 01-10618, 01-10620, 01-10621, 01-10622, 01-10623, 21-13161, 37-22806, 63-33732, 63-33733, 63-33734, 63-33737, 63-33738, 65-23531, and 65-23532.

Deborah Gibson, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4803, fax: (208) 287-6700.

Dated this 10<sup>th</sup> day of September 2014.

  
GARY SPACKMAN  
Director

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of September 2014, I served the foregoing *ORDER LIFTING STAYING AND NOTICE OF STATUS CONFERENCE* to the following and by the method indicated below:

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| RANDALL C BUDGE<br>THOMAS J BUDGE<br>RACINE OLSON<br>PO BOX 1391<br>POCATELLO ID 83204-1391<br><a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a><br><a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a> | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| DEAN TRANMER<br>CITY OF POCATELLO<br>PO BOX 4169<br>POCATELLO ID 83201<br><a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a>  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| SARAH A KLAHN<br>WHITE & JANKOWSKI<br>511 SIXTEENTH ST STE 500<br>DENVER CO 80202<br><a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a>   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| JERRY R RIGBY<br>RIGBY ANDRUS<br>25 NORTH SECOND EAST<br>REXBURG ID 83440<br><a href="mailto:jrigby@rex-law.com">jrigby@rex-law.com</a>   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| ROBERT L HARRIS<br>HOLDEN KIDWELL<br>PO BOX 50130<br>IDAHO FALLS ID 83405<br><a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a>   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| PETER R ANDERSON<br>TROUT UNLIMITED<br>910 W MAIN ST STE 342<br>BOISE ID 83702<br><a href="mailto:panderson@tu.org">panderson@tu.org</a>  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |

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| <p>JAMES C TUCKER<br/> IDAHO POWER COMPANY<br/> PO BOX 70<br/> BOISE ID 83702<br/> <a href="mailto:jamestucker@idahopower.com">jamestucker@idahopower.com</a></p>   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| <p>DAVID GEHLERT<br/> US DEPT OF JUSTICE<br/> 999 18<sup>TH</sup> ST SOUTH TERRACE STE 370<br/> DENVER CO 80202<br/> <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a></p>   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| <p>JOHN K SIMPSON<br/> TRAVIS L THOMPSON<br/> PAUL L ARRINGTON<br/> BARKER ROSHOLT &amp; SIMPSON<br/> 195 RIVER VISTA PLACE STE 204<br/> TWIN FALLS ID 83301-3029<br/> <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a><br/> <a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a><br/> <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a></p> | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| <p>W KENT FLETCHER<br/> FLETCHER LAW OFFICE<br/> PO BOX 248<br/> BURLEY ID 83318<br/> <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></p>  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input checked="" type="checkbox"/> Email |
| <p>CONSOLIDATED FARMERS CANAL<br/> 3215 N 2000 W<br/> REXBURG ID 83440</p>  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email            |
| <p>SOUTHEAST IDAHO CANAL CO<br/> PO BOX 15<br/> ST ANTHONY ID 83445</p>   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email            |
| <p>THE NEW LAVASIDE DITCH CO LTD<br/> ATTN VON CORNELISON<br/> 66 E RIVER RD<br/> BLACKFOOT ID 83221</p>  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email            |

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| SOUTH FORK OF THE SNAKE RIVER<br>WATER USERS<br>ATTN DARRELL KER<br>4861 N 44TH E<br>IDAHO FALLS ID 83401 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| SOUTH FORK OF THE SNAKE RIVER<br>WATER USERS<br>ATTN STAN HAWKINS<br>BOX 367<br>UCON ID 83454             | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| DE LLOYD JACOBSON<br>PO BOX 68<br>SWAN VALLEY ID 83449  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| TED MICKELSEN<br>2255 N 4000 W<br>TETONIA ID 83452  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| ROGER LING<br>PO BOX 623<br>RUPERT ID 83350   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| GARY DIAL<br>1448 N 800 E<br>SHELLEY ID 83274   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| STAN NIELSON<br>1234 E 1000 N<br>SHELLEY ID 83274   | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| GREG BURNS<br>655 12 <sup>TH</sup> AVE<br>SLC UT 84103  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| RANDY BINGHAM<br>20 E 220 S<br>BURLEY ID 83316  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| DAN DARRINGTON<br>705 E 300 S<br>BURLEY ID 83316  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |

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| LEONARD BECK<br>272 W 200 S<br>BURLEY ID 83316  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| CLIFFORD SEARLE<br>500 E 500 S<br>BURLEY ID 83316                                       | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| DEAN EDGAR<br>480 E 400 S<br>BURLEY ID 83316  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| GARY BLANCHARD<br>355 SKYLANE<br>POCATELLO ID 83204                                     | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| NEIL MORGAN<br>762 W HWY 39<br>BLACKFOOT ID 83221                                       | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| STEVEN MURDOCK<br>PEOPLES CANAL & IRRIGATION CO.<br>1050 W HWY 39<br>BLACKFOOT ID 83221 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| RON HANSEN<br>6935 N 500 W<br>TETONIA ID 83452  | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Email |
| MIKE LEGGE<br><a href="mailto:mlegge@usmagnesium.com">mlegge@usmagnesium.com</a>        | <input checked="" type="checkbox"/> Email   |

  
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 Administrative Assistant for the Director  
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