

DEC 15 2017

DEPARTMENT OF WATER RESOURCES

DUANE MECHAM  
Attorney  
U.S. Department of the Interior  
805 SW Broadway, Suite 600  
Portland, Oregon 97205  
503-231-6299/office phone  
503-231-2166/fax  
503-502-5904/cell phone  
Duane.Mecham@sol.doi.gov

*Attorney for U.S. Department of the Interior, Bureau of Indian Affairs*

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

IN THE MATTER OF PETITION REGARDING )	<b>Docket No. P-WRA-2017-002</b>
STORAGE RESET IN WATER DISTRICT 01 )	
FILED BY MILNER IRRIGATION )	<b>BUREAU OF INDIAN AFFAIRS</b>
DISTRICT )	<b>RESPONSE TO STATEMENT OF</b>
_____ )	<b>ISSUES</b>

The U.S. Bureau of Indian Affairs (“BIA”), pursuant to the Director’s ORDER in this matter dated November 20, 2017, submits this *Response to Statements of Issues*.

**Response to Statements of Issues**

The parties who filed substantive Statements of Issues in this matter identified a number of similar issues bearing on the Director’s authority and the administration of storage and natural flow water rights in Water District 01 which are raised by the petition filed by Milner Irrigation District (Milner) that gave rise to this contested case. BIA concurs that these issues should be addressed by the Director.

In addition, the Statement of Issues filed by the Palisades Water Users, Inc. and The City of Idaho Falls raises the issue: “What is the legal effect of the spaceholder contracts with the Bureau of Reclamation which define “storage season” as “the time period from October 1 to the

date when no more water is available for storage in a particular reservoir”? This issue mirrors the issues discussed by the Shoshone-Bannock Tribes at page 12 of their Statement of Issues with respect to the storage contract (“Michaud Contract”) between BIA and the Bureau of Reclamation that “was attached to, specifically incorporated within, and repeatedly referenced in the Tribes’ Partial Final Consent Decree in the SRBA...” The Michaud Contract also has a “storage season” time period commencing on October 1. Both parties have identified that consideration of this storage contract provision (in most if not all spaceholder contracts) is relevant to this proceeding.

Finally, BIA notes that in the 1990 Fort Hall Indian Water Rights Agreement between the Tribes, the State of Idaho and others, the State of Idaho agreed that the Tribes could establish a “Shoshone-Bannock Water Bank,” at Article 7.3.4. This water bank entitles the Tribes to market water that accrues to the storage identified in the Michaud Contract. The Tribes have explained that some proposals for establishing a new reset date would negatively impact the terms of the Fort Hall Agreement and Partial Final Consent Decree. It is important to highlight that, in Article 7.3.6 of the Fort Hall Agreement, the State committed to the following:

The State agrees not to take any action that will interfere with the nature, scope, spirit and purposes of the Shoshone-Bannock Water Bank.

The Tribes have raised important concerns that the positions taken in the petition submitted by Milner would adversely impact the Tribes’ water bank and be contrary to the terms and intent of the 1990 Fort Hall agreement and the Tribes’ Partial Final Consent Decree. Thus, given that the Director is an officer of the State, it is important that these issues be considered in this proceeding and in light of the commitments made by the State in the 1990 Agreement.

DATED this 15<sup>th</sup> Day of December, 2017.

U.S. Department of the Interior  
Office of the Regional Solicitor

  
Thomas M. Moran  
*Attorney for the U.S. Bureau of Indian Affairs*

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2017, I served a true and correct copy of the foregoing "*Bureau of Indian Affairs Response to Statements of Issues*" on the following by electronic mail:

Director, Gary Spackman  
c/o Kimi White  
Idaho Department of Water Resources  
322 E Front Street  
Boise, Idaho 83720-0098  
[gary.spackman@idwr.idaho.gov](mailto:gary.spackman@idwr.idaho.gov)  
[kimi.white@idwr.idaho.gov](mailto:kimi.white@idwr.idaho.gov)  
[garrick.baxter@idwr.idaho.gov](mailto:garrick.baxter@idwr.idaho.gov)  
[emmi.blades@idwr.idaho.gov](mailto:emmi.blades@idwr.idaho.gov)

Travis L. Thompson  
Barker Rosholt & Simpson, LLP  
PO Box 63  
Twin Falls, Idaho 83303-0063  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)

Lyle Swank, Watermaster  
Water District 01  
900 N. Skyline Dr., Ste A  
Idaho Falls, Idaho 83402-1718  
[Lyle.swank@idwr.idaho.gov](mailto:Lyle.swank@idwr.idaho.gov)

Sarah A. Klahn  
Mitra M. Pemberton  
White & Jankowski, LLP  
511 Sixteenth Street, Suite 500  
Denver, Colorado 80202  
[sarahk@white-jankowski.com](mailto:sarahk@white-jankowski.com)  
[mitrap@white-jankowski.com](mailto:mitrap@white-jankowski.com)

John K. Simpson  
Travis L. Thompson  
Jonas A. Reagan  
Barker Rosholt & Simpson, LLP  
P.O. Box 63  
Twin Falls, Idaho 83303-0063  
[jks@idahowaters.com](mailto:jks@idahowaters.com)  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)  
[jar@idahowaters.com](mailto:jar@idahowaters.com)

Chris M. Bromley  
Candice McHugh  
McHugh Bromley, PLLC  
380 S. 4th Street, Suite 103  
Boise, Idaho 83702  
[cbrombley@mchughbromley.com](mailto:cbrombley@mchughbromley.com)  
[cmchugh@mchughbromley.com](mailto:cmchugh@mchughbromley.com)

John K. Simpson  
Barker Rosholt & Simpson, LLP  
P.O. Box 2139  
Boise, Idaho 83701-2139  
[jks@idahowaters.com](mailto:jks@idahowaters.com)

Norman M. Semanko  
Parsons Behle & Latimer  
800 West Main Street, Suite 1300  
Boise, Idaho 83702  
[nsemanko@parsonsbehle.com](mailto:nsemanko@parsonsbehle.com)  
[ecf@parsonsbehle.com](mailto:ecf@parsonsbehle.com)

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

Kirk Bybee  
City of Pocatello  
911 North 7th Ave.  
P.O. Box 4169  
Pocatello, Idaho 83201  
[kibybee@pocatello.us](mailto:kibybee@pocatello.us)

Jerry R. Rigby  
Rigby, Andrus & Rigby Law, PLLC  
25 North Second East  
Rexburg, Idaho 83440  
[jrigby@rex-law.com](mailto:jrigby@rex-law.com)

W. Kent Fletcher  
Fletcher Law Office  
P.O. Box 248  
Burley, Idaho 83318  
[wkf@pmt.org](mailto:wkf@pmt.org)

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

Mr. Steve Howser  
Aberdeen-Springfield Canal Co.  
P.O. Box 857  
Aberdeen, Idaho 83210  
[stevch@ascanal.org](mailto:stevch@ascanal.org)

W. Kent Fletcher  
FLETCHER LAW OFFICE  
P.O. Box 248  
Burley, Idaho 83318

William Bacon  
Shoshone-Bannock Tribes  
PO Box 306  
Fort Hall, Idaho 83203

Edmund Clay Goodman  
Hobbs, Straus, Dean & Walker LLP  
806 SW Broadway, Suite 900  
Portland, Oregon 97205

\*\* service by U.S. mail