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DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF THE PETITION
REGARDING STORAGE RESET IN
WATER DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

Docket No. P-WRA-2017-002
ABERDEEN-SPRINGFIELD CANAL
COMPANY'S OPENING BRIEF
REGARDING THRESHOLD LEGAL
QUESTION

COMES NOW, Aberdeen-Springfield Canal Company ("ASCC"), by and through Norman M. Semanko of the law firm Parsons Behle and Latimer, and hereby submits its *Opening Brief Regarding Threshold Legal Question* pursuant to the *Order Re: Statements of Issues and Responses; Order Adopting Deadlines; Amended Notice of Status Conference* dated January 3, 2018, and the Department's Rules of Procedure, IDAPA 37.01.01, as follows:

INTRODUCTION

The Director ordered the parties in this matter to address in their briefing the following threshold legal question:

Whether the plain language of the “period of use” element of the storage water right partial decrees for federal onstream reservoirs in Water District 01 that specifies “1/1 to 12/31” as the time period for “irrigation storage” requires that the reset date for those rights be January 1.

Order Re: Statements of Issues and Responses; Order Adopting Deadlines; Amended Notice of Status Conference at 4 (January 3, 2018).

As discussed below, the “period of use” language in the partial decrees does not require a January 1 reset date.

ARGUMENT

ASCC is aware that other parties will provide opening briefs setting forth and discussing the applicable Idaho legal standards for interpreting decrees and addressing any ambiguities therein. ASCC will not duplicate that effort here. Instead, ASCC will focus on the State of Colorado’s experience with this issue and how its practical interpretation of the “seasonal year” is applicable here.

In Colorado, the courts did not define a storage year when adopting the one-fill rule for reservoir storage rights. As a result, the Colorado State Engineer adopted a “seasonal year” of November 1 to October 31, as early as 1936. The Colorado Supreme Court has recognized this “seasonal year” for irrigation reservoirs. This is the presumed seasonal year for a majority of reservoirs unless the decree specifies a different date. *General Administration Guidelines for Reservoirs, Colorado Division of Water Resources* at 4 (2016) (available at water.state.co.us).

The presumptive seasonal (or filling) year can be different if specified in the storage decree. For example, some reservoirs are decreed with an “accounting year” beginning on April 1 and ending on March 31 of the following year. Ela and Norris, “Everything You Wanted to Know About Storing Water in Colorado: from Reservoirs to Rain Barrels” at 2 (2016) (available at sdaco.org). Otherwise, the reset date is November 1.

The storage water right decrees in question here do not set forth a “seasonal year” or “accounting year” of January 1–December 31. The “period of use” in the decree refers to “the period of the year when water is used” for a particular purpose. I.C. Secs. 42-1409(1)(g)(i), 42-1411(2)(g) and 42-1412(6). Certainly, the decreed “period of use” is year ’round, but that does not answer the question of when during the year storage begins to accrue.

The contracts between the United States and the contract spaceholders (including ASCC) define the storage season as beginning on October 1. *The IDWR Staff Memorandum Re: Reset Date by Tony Olenichak* (Dec. 1, 2017) also makes clear that the storage season has commenced before January 1. These practical interpretations are of legal significance in determining what the “seasonal year” or “accounting year” is, within the defined “period of use”.

As the Colorado State Engineer concluded in 1936:

As the result of climatic, crop and other conditions affecting the supply and use of water in the state, it is considered desirable to adopt what might be termed a “seasonal” year, which it is thought will permit of a more practicable and efficient administration of the aforementioned ruling of the Court limiting a reservoir to one filling in any one year. . . .Until further notice, it will therefore be assumed that the “seasonal” year will cover the period from November 1st to October 31st.

Given that it is not expressly identified in the “period of use” or elsewhere on the face of the partial decree, the relevant question is: When does the storage season begin? *See, e.g., North*

Sterling Irrigation Dist. v. Simpson, Case No. 05 CW 125, Findings of Fact, Conclusions of Law, Judgment, and Order of the Water Court (2007) (determining that November 1 is the beginning of the storage year, as evidenced by historic interpretation); *see also, Hassler v. Fountain Mut. Irrigation Co.*, 93 Colo. 246, 26 P.2d 102 (1933) (“considerable importance attaches to the practical interpretation or construction placed upon the decrees by those officials charged under the statutes with the duty of giving effect thereto and of distributing the water thereunder.”).

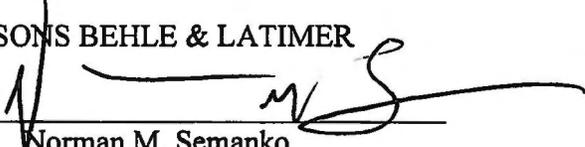
The SRBA Partial Decree for Water Right No. 1-219 (Lake Walcott) includes a “period of use” for “irrigation storage” of “01-01 to 12-31,” similar to those for other federal reservoirs. The conditions contained in the decree reference the storage contracts between the United States and the contract spaceholders. In addition, this right was previously licensed and then decreed in the Foster Decree (1913). In all that time, there has been no practical interpretation that the storage season begins on January 1. The “period of use” contained in the partial decree does not change that, as it does not identify a specific “seasonal year” or “accounting year.” Pursuant to Idaho law, that practical interpretation is left for the Director to make, within his sound discretion and based upon the record to be made in this matter.

CONCLUSION

For the reasons set forth above, the “period of use” language in the partial decrees does not require a January 1 reset date.

DATED this 19th day of January, 2018.

PARSONS BEHLE & LATIMER

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following on this 19th day of January, 2018, by the following methods, in accordance with the agreement by the parties and intervenors to accept electronic service:

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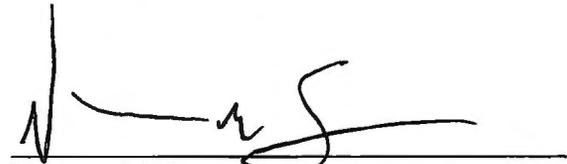
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