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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

**COALITION OF CITIES' RESPONSE
TO OPENING BRIEFS RE:
THRESHOLD LEGAL QUESTION**

COME NOW the Cities of, Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone and Wendell (“Coalition of Cities”) by and through their counsel and, pursuant the *Order Re: Statements of Issues and Response; Order Adopting Deadlines; Amended Notice of Status Conference* dated January 3, 2018 (the “Order”) hereby files this *Response to Opening Briefs Re: Threshold Legal Question*.

The City of Pocatello, the City of Idaho Falls, Palisades Water Users, Inc., the Shoshone-Bannock Tribes, the United States Bureau of Indian Affairs, the Surface Water Coalition (“SWC”), the Upper Valley Storage Holders and Aberdeen-Springfield Canal company all timely filed

Opening Briefs in response to the Order’s request to brief the question on “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 at 3.

**RESPONSE TO CITY OF POCATELLO, CITY OF IDAHO FALLS,
PALISADES WATER USERS, INC., SHOSHONE-BANNOCK TRIBES, AND
UNITED STATES BUREAU OF INDIAN AFFAIRS**

The Coalition of Cities supports the legal analysis, argument and conclusions contained in these opening briefs and agrees with the conclusion that the Director is not required to adopt a January 1 storage reset date because the “period of use” element on the storage water right has a January 1 date. Rather, it is important that the Director administer the water rights in a manner that maximizes the water available for use under all the storage water rights and to do this, a variable fall reset date is necessary. Staff Memo at 3, 6-7.

RESPONSE TO THE SURFACE WATER COALITION

The *Surface Water Coalition’s Opening Brief Re: Legal Question* (“SWC Br.”) states that the SWC “supports a fall ‘reset’ practice that maximizes storage of water so long as it does not interfere with natural flow rights with priorities senior to American Falls or Palisades. SWC Br. at 11. Further, the SWC states that “any unintended consequences of the SRBA Process should not be implemented in a manner that would harm existing spaceholders and the continued efficient storage of water in the Upper Snake River Basin.... where the storage water rights have been appropriated and administered to begin filling in the fall to ensure adequate irrigation supplies in future years, it certainly wasn’t the intent of the SRBA, through issuance of partial decrees, to fundamentally change those operations.” Id. at 4. The SWC also notes that the removal of the 2,500 cfs diversion rate limit on Water Right No.1-219 “allowed [water right no. 1-219] to take all available natural

flow to the detriment of Milner and AFRD#2” Id. at 9. Milner and AFRD#2 were also parties and claimants in the SRBA. The SWC argues that this is a function of Water District 01’s “accounting program” which should not be “used in a manner that injures existing natural flow rights diverting for irrigation purposes.” Id. at 11. However, it is not Water District 01’s accounting program that is causing the SWC’s concern, it is the fact that water right 1-219 was decreed without the 2,500 cfs limitation.

The SWC is essentially arguing that because Minidoka Irrigation District’s water no.1-219 was decreed without the 2,500 cfs limitation, that the Director needs to change how he administers the Upper Snake River in order to avoid any “unintended consequences of the SRBA Process.” The Lake Walcott storage right decree “was not decreed with the 2500 cfs daily flow rate limitation” and thus, that limitation was “removed from the water right accounting in 2011.” Staff Memo at 4. This change, required by the final 1-219 decree may impact distribution to Milner Irrigation District and AFRD2 in some years. However, rectifying this impact by administrative interpretation seems to amount to an impermissible collateral attack on the Lake Walcott decree. See, *Rangen, Inc. v. The Idaho Dep’t of Water Resources*, 159 Idaho 798, 806, 367 P.3d 193, 201 (2016).

RESPONSE TO THE UPPER VALLEY STORAGE RIGHT HOLDERS

The Coalition of Cities agrees with the Upper Valley Storage Right Holder’s analysis and conclusion that a January 1 reset date is not required and that it is not in the best interests of the 01 storage system. Upper Valley Br. at 5. However, the Coalition of Cities does not agree that a January 1 reset date will “often help ... junior storage right holders.” The record does not fully support this conclusion. As reflected in the Staff Memo at pages 6-7, a static January 1 reset date will result in not maximizing the amount of beneficial use but a variable reset date, in the fall, allows the possibility of maximizing the accrual of storage captured in the reservoirs above Milner.

The Coalition of Cities rely on the ability to lease storage to mitigate for junior groundwater rights and is in the process of negotiating a long-term resolution that will rely on this water being reliably available in the future. Maintaining the ability of the Watermaster in Water District 01 to maximize storage in Bain 01 by using a variable fall reset date is the best way to ensure an available supply of storage water for leases by the Coalition of Cities.

RESPONSE TO ABERDEEN-SPRINGFIELD CANAL COMPANY

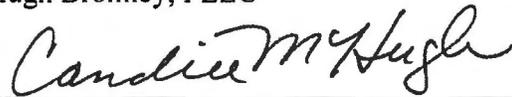
Finally, the Coalition of Cities agree with Aberdeen-Springfield Canal Company's conclusion regarding the fact that the Director has the discretion to continue with a variable, fall storage reset date and that the January 1 "period of use element" on the storage water rights does not compel a January 1 reset date. The Coalition of Cities takes no position on the accuracy of the rational and interpretation of Colorado law to support that conclusion however.

CONCLUSION

For the reasons set forth above, a fall reset date should continue as the administrative practice in the Upper Snake River.

Dated this 26th day of January, 2018.

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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 26th day of January, 2018, by the following method:

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