

Edmund C. Goodman, ISB # 10288
Hobbs, Straus, Dean & Walker, LLP
516 S.E. Morrison Street, Suite 1200
Portland, OR 97214
(503) 242-1745 (phone)
(503) 242-1072 (fax)
egoodman@hobbsstraus.com

[Remaining Counsel see signatures]

RECEIVED

MAY 23 2018

DEPARTMENT OF
WATER RESOURCES

ATTORNEY FOR THE SHOSHONE-BANNOCK TRIBES

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

IN THE MATTER OF THE PETITION)
REGARDING STORAGE RESET IN) Docket No. P-WRA-2017-002
WATER DISTRICT 01 FILED BY)
MILNER IRRIGATION DISTRICT) **INTERIM STIPULATION AND MOTION**
_____) **FOR ORDER TO APPROVE**
_____)

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively "Surface Water Coalition" or "SWC"), Fremont Madison Irrigation District, Idaho Irrigation District, North Fork Reservoir Company, and New Sweden Irrigation District. (collectively "Upper Valley Storage Holders"), the Coalition of Cities,¹ Idaho Power Company, Aberdeen-Springfield Canal Company, Palisades Water Users, Inc. and the City of Idaho Falls (collectively "PWUI"), the City of Pocatello, the Shoshone-Bannock Tribes, and the United States Department of Interior, Bureau of Indian Affairs ("BIA") (together "Parties"), by and through their undersigned counsel of record, and pursuant to the Department's Rules of Procedure 557 and 612 (IDAPA 37.01.01), hereby

¹ The Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone and Wendell.

stipulate and jointly move the Department for an order approving the same and including the following procedures in Water District 01 water right reservoir administration and accounting for the 2018 calendar year.

1. This contested case was initiated in response to Milner Irrigation District's (Milner) August 18, 2017 letter to the Director of the Idaho Department Water Resources (IDWR) and the Water District 01 Watermaster.
2. Milner's letter inquired into the Basin 01 storage water rights "reset" accounting and how it would be implemented in the fall of 2017 vis-à-vis Milner's 1916 natural flow irrigation water right 01-17.
3. The Director responded by initiating this contested case. *See Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (October 5, 2017) ("*Notice Order*"). The Director published the *Notice Order* in newspapers throughout Water District 01 and provided any interested person or water user the opportunity to appear and intervene.
4. The above-named parties all filed motions and were granted intervention. On November 20, 2017 the Director issued an order requesting a staff memorandum and setting deadlines for the parties to file and respond to statements of issues. Water District 01 (WD01) staff filed its *Staff Memorandum* on December 1, 2017. Various parties then submitted statements of issues and responses. On January 3, 2018 the Director issued his *Order re: Statements of Issues and Responses; Order Adopting Deadlines; Amended Notice of Status Conference* ("*Legal Question Order*"). The Director requested the parties to brief the following legal question:

[W]hether 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.

Legal Question Order at 4.

5. Various parties then filed opening and response briefs addressing the above-referenced question. On February 7, 2018 the parties filed a *Stipulated Motion for Stay* requesting the Director to stay a pending decision on the legal question and allow the parties 30 days to continue settlement negotiations. The Director granted the motion. A second stipulated motion was filed on March 2, 2018, requesting the Director to continue the stay and vacate the previously scheduled hearing. The Director granted this motion and conducted a status conference on March 20, 2018. At the status conference the parties reported a settlement in principle and scheduled a follow up status conference for April 26, 2018.

6. At the April 26, 2018 status conference, the parties reported on their negotiation progress and asked for an extension of the stay to facilitate further discussions, and execution of an interim stipulation for the 2018 calendar year. The Director agreed and extended the stay and also set a deadline of June 4, 2018 to submit any interim stipulation to cover operations during the 2018 calendar year.
7. This Interim Stipulation followed.
8. The parties understand the term “reservoir reset” describes the date in the fall upon which the WD01 Watermaster resets the storage volumes for the Upper Snake River Basin storage rights² so that they may begin accruing natural flow when in priority up to the annual storage volume element of the water right.
9. The parties request that the Director make this Interim Stipulation an order of the Department for the 2018 calendar year.
10. In executing this Interim Stipulation, no party waives any legal or factual arguments regarding the issues that may eventually be litigated in this contested case, nor may this Interim Stipulation be offered as evidence or proof of any parties’ consent to the Interim Stipulation as the permanent resolution of the dispute.

INTERIM STIPULATION

For the 2018 calendar year only, the parties agree that “reservoir reset” shall be operated in the following manner:

The WD01 Watermaster shall reset storage accounts and begin accounting for and distributing, in priority, natural flow to reservoir storage rights as of September 15th, 2018 for the next annual storage volume period.

Provided, however, WD01 shall limit the rate of diversion to storage of the Lake Walcott storage water right 1-219 to 2,500 cfs from September 15 through and including October 15.

² Water right nos. 1-219, 1-2064, 1-2068, 1-4055, 1-10042, 1-10043, 1-10044, 1-10045, 1-10620, 1-10621A, 1-10621B, 1-10622, 1-10623, 21-2156, 21-4155, 21-10560, 21-13161, 21-13194, 21-2154, 21-2161, 21-12946, 21-13193, 25-7004, 25-14413A, and 25-14413B.

DATED this 22nd day of May, 2018.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Travis L. Thompson

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Milner Irrigation
District, North Side Canal Company, and
Twin Falls Canal Company*

FLETCHER LAW OFFICE



for

W. Kent Fletcher

*Attorneys for Minidoka Irrigation
District and American Falls
Reservoir District #2*

DATED this 23rd day of May, 2018.

BARKER ROSHOLT & SIMPSON LLP

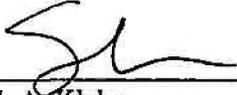


John K. Simpson

Attorneys for Idaho Power Company

DATED this 22nd day of May, 2018.

WHITE & JANKOWSKI LLP

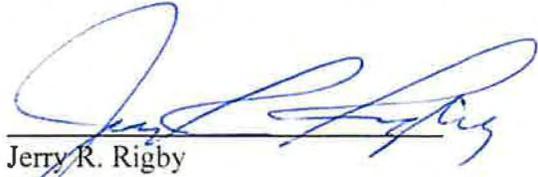


Sarah A. Klahn

Attorneys for City of Pocatello

DATED this 23rd day of May, 2018.

RIGBY ANDRUS & RIGBY, CHTD.



Jerry R. Rigby

*Attorneys for Fremont Madison Irrigation District,
Idaho Irrigation District, North Fork Reservoir Co., and
New Sweden Irrigation District*

DATED this 22nd day of May, 2018.

William Bacon by SDO
William Bacon

Attorneys for Shoshone-Bannock Tribes

DATED this 22nd day of May, 2018.

HOBBS STRAUS DEAN & WALKER LLP

Edmund C. Goodman by SDO
Edmund C. Goodman

Attorneys for Shoshone-Bannock Tribes

DATED this 23^d day of May, 2018.

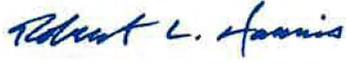
Duane Mecham

Duane Mecham

Attorneys for U.S. Dept. of Interior, Bureau of Indian Affairs

DATED this 23rd day of May, 2018.

HOLDEN KIDWELL HAHN & CRAPO PLLC

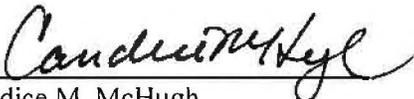


Robert L. Harris

*Attorneys for Palisades Water Users, Inc. and
the City of Idaho Falls*

DATED this 22nd day of May, 2018.

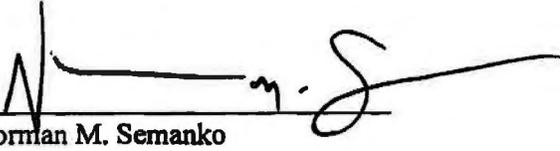
MCHUGH & BROMLEY PLLC


Candice M. McHugh

Attorneys for Coalition of Cities

DATED this 23 day of May, 2018.

PARSONS BEHLE & LATIMER



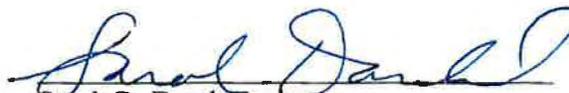
Norman M. Semanko

Attorneys for Aberdeen-Springfield Canal Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of May, 2018, I caused to be served a true and correct copy of the foregoing **INTERIM STIPULATION AND MOTION FOR ORDER TO APPROVE** by email and U.S. mail to IDWR, and by electronic mail to the parties:

<p>Director Gary Spackman c/o Kimi White IDWR 322 E Front St Boise, ID 83720-0098 *** service by U.S. Mail and electronic mail gary.spackman@idwr.idaho.gov kimi.white@idwr.idaho.gov garrick.baxter@idwr.idaho.gov</p>	<p>Sarah A. Klahn White & Jankowski, LLP 511 Sixteenth Street, Suite 500 Denver, Colorado 80202 sarahk@white-jankowski.com</p>	<p>William Bacon Shoshone-Bannock Tribes P.O. Box 306 Fort Hall, Idaho 83203 bbacon@sbtribes.com</p>
<p>Edmund Clay Goodman Hobbs, Straus, Dean & Walker LLP 806 SW Broadway, Suite 900 Portland, Oregon 97205 egoodman@hobbsstraus.com</p>	<p>Chris M. Bromley Candice McHugh McHugh Bromley, PLLC 380 S. 4th Street, Suite 103 Boise, Idaho 83702 cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>	<p>Jerry R. Rigby Rigby, Andrus & Rigby Law, PLLC 25 North Second East Rexburg, Idaho 83440 jrigby@rex-law.com</p>
<p>John K. Simpson Barker Rosholt & Simpson, LLP P.O. Box 2139 Boise, Idaho 83701-2139 jks@idahowaters.com</p>	<p>W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318 wkf@pmt.org</p>	<p>Norman M. Semanko Parsons Behle & Latimer 800 West Main Street, Ste 1300 Boise, Idaho 83702 nsemanko@parsonsbehle.com</p>
<p>Robert L. Harris D. Andrew Rawlings Holden, Kidwell, Hahn & Crapo, PLLC P.O. Box 50130 Idaho Falls, Idaho 83405 rharris@holdenlegal.com arawlings@holdenlegal.com</p>	<p>Duane Mecham U.S. Dept. of the Interior Bureau of Indian Affairs 805 SW Broadway, Suite 600 Portland, Oregon 97205 duane.mecham@sol.doi.gov</p>	<p>Lyle Swank Water District 01 900 N. Skyline Drive, Suite A Idaho Falls, Idaho 83402-1718 lyle.swank@idwr.idaho.gov</p>


 Sarah R. Dandurand