

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF ACCOUNTING)
FOR DISTRIBUTION OF WATER)
TO THE FEDERAL ON-STREAM)
RESERVOIRS IN WATER)
DISTRICT 63)
_____)

**ORDER LIFTING STAY AND
NOTICE OF STATUS
CONFERENCE**

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.¹ 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 Water District 01 contested case proceeding. 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 63 pursuant to the existing accounting methods and procedures; and (2) the origin, adoption, and development of the existing accounting methods and procedures in Water District 63.

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 63” 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 7, 2014, at 2:00 p.m.** at the Department’s office located at 322 E. Front St., 6th Floor Director’s Conference Room, Boise, Idaho.

All parties to the matter must be represented at the status conference in person or by telephone. If participating by telephone, please dial **1-215-446-0193** and provide participant code: **275568#**.

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,

¹ The SRBA subcase numbers for the refill 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.

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 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 10th day of September 2014.


GARY SPACKMAN
Director

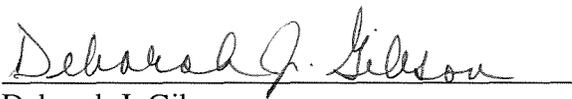
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th 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:

<p>Erika E. Malmen PERKINS COIE LLP 1111 West Jefferson St., Ste 500 Boise, ID 83702-5391 emalmen@perkinscoie.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Peter R. Anderson TROUT UNLIMITED 910 W. Main St., Ste 342 Boise, ID 83702 panderson@tu.org</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Scott L. Campbell Andrew J. Waldera MOFFATT THOMAS BARRETT ROCK & FIELDS, CHRTD P.O. Box 829 Boise, ID 83701 slc@moffatt.com ajw@moffatt.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>David Gehlert, Esq. U.S. Dept. of Justice Denver Field Office 999 18th Street, South Terrace Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>James C. Tucker, Esq. Idaho Power Company P.O. Box 70 Boise, ID 83702 jamestucker@idahopower.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

<p>Daniel V. Steenson S. Bryce Farris Sawtooth Law Offices, PLLC P.O. Box 7985 Boise, ID 83707 dan@sawtoothlaw.com bryce@sawtoothlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Albert P. Barker Shelley M. Davis BARKER ROSHOLT & SIMPSON, LLP P.O. Box 2139 Boise, ID 83701-2139 apb@idahowaters.com smd@idahowaters.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Chas. F. McDevitt Dean J. Miller Celeste K. Miller McDEVITT & MILLER, LLP P.O. Box 2564 Boise, ID 83701 chas@mcdevitt-miller.com joe@mcdevitt-miller.com ck@mcdevitt-miller.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Jerry A. Kiser P.O. Box 8389 Boise, ID 83707 jkiser@cableone.net</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON LLP 195 River Vista Place, Ste 204 Twin Falls, Idaho 83301-3029 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

<p>W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, Idaho 83318 wkf@pmt.org</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Rex Barrie Watermaster Water District 63 P.O. Box 767 Star, ID 83669</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<p>Ron Shurtleff Watermaster Water District 65 102 N. Main St Payette, ID 83661</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<p>Michael P. Lawrence Givens Pursley P.O. Box 2720 Boise, ID 83701-2720</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<p>Bruce Smith Moore Smith 950 W. Bannock St. Ste 520 Boise, ID 83702-5716</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email



Deborah J. Gibson
Administrative Assistant for the Director
Idaho Department of Water Resources