

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

IN THE MATTER OF ACCOUNTING	)	
FOR DISTRIBUTION OF WATER	)	<b>FIFTH AMENDED</b>
TO THE FEDERAL ON-STREAM	)	<b>SCHEDULING ORDER;</b>
RESERVOIRS IN WATER	)	<b>NOTICE OF HEARING</b>
DISTRICT 63	)	
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A hearing for the above titled matter was scheduled for March 9-11, 2015. On February 5, 2015, the Director issued the *Fourth Amended Scheduling Order*. The *Fourth Amended Scheduling Order* vacated the March 9-11, 2015 hearing, suspended deadlines for completion of discovery but allowed discovery to continue, and cancelled the prehearing conference.

This order reschedules the hearing in this matter and establishes deadlines for hearing preparation.

**ORDER**

IT IS HEREBY ORDERED that the following schedule shall govern this proceeding:

**June 19, 2015** – Disclosure of expert witnesses who may be called by the parties to testify at the hearing. This deadline also applies to any experts who may testify for IDWR at the hearing.

**July 31, 2015** – Submittal of witness lists and exhibit lists by the parties. This deadline also applies to IDWR witnesses who may testify and to documents IDWR may wish to make part of the record in this matter.

**August 14, 2015** – Prehearing conference and deadline for completion of discovery. The prehearing conference will be held at 2:00 p.m. at the Department’s State Office, located at 322 E. Front Street, 6<sup>th</sup> Floor, Director’s Conference Room. Telephone participation is available by calling 1-720-279-0026 and entering the guest code when prompted: 321188#

**August 27-28, August 31, and September 9-10, 2015**– Hearing

**NOTICE OF HEARING**

The Director hereby notifies the parties that the hearing is scheduled for **August 27-28, August 31, and September 9-10, 2015**. The hearing will begin at 9:00 a.m., at the

Department's State Office, located at 322 E. Front Street, 6th Floor Conference Rooms B, C and D, Boise, Idaho. The presiding officer at the hearing will be Director Gary Spackman.

If you plan to offer exhibits for the record at the hearing, note that Rule 606 of the Department's Rules of Procedure requires that a copy be provided to each party and the presiding officer whose mailing address is P.O. Box 83720, Boise, Idaho 83720-0098.

The hearing will be held in accordance with 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 of Procedure may be obtained from the Department upon request.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please contact Deborah Gibson at (208) 287-4803, no later than five (5) days prior to the hearing.

During the course of the hearing, all parties appearing in this matter will have the opportunity to present information, examine witnesses, and provide argument on issues.

### **ISSUE TO BE ADDRESSED AT HEARING**

In the October 22, 2013, *Notice of Contested Case and Formal Proceedings, and Notice of Status Conference*, the Director defined the issue for hearing as:

**TO ADDRESS AND RESOLVE CONCERNS WITH AND/OR OBJECTIONS  
TO HOW WATER IS COUNTED OR CREDITED TOWARD THE FILL OF  
WATER RIGHTS FOR THE FEDERAL ON-STREAM RESERVOIRS  
PURSUANT TO EXISTING PROCEDURES OF ACCOUNTING IN WATER  
DISTRICT 63**

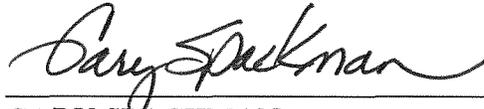
The fundamental question in this proceeding is how water is counted or credited towards the fill of a water right. This is the question certain parties to Basin-Wide Issue 17 sought to have answered and which remains unanswered. *In re SRBA*, 157 Idaho 385, 388-89, 336 P.3d 792, 795-96 (2014). The Idaho Supreme Court recognized that the key question is how water rights are filled or satisfied and spent considerable time discussing this topic:

We agree with the Boise Project Board and the SRBA that the question of when a storage water right is filled presents a mixed question of fact and law. Indeed, the complex and historically dense contents of the Shelley Davis affidavit, along with the parties' attempts to prove when a storage water right is filled by using reservoir-specific historical practices, support the conclusion that determining when a water right is filled requires the development of a factual record. There is an administrative procedure for fleshing out these factual interpretations if the SRBA court chooses to address the issue of fill on remand.

*Id.* at 392, 336 P.3d at 799.

The Court also stated: “This Court has recognized the Director's discretion to direct and control the administration of water in accordance with the prior appropriation doctrine. ... And implicit in providing each user its decreed water would be determining when the decree is filled or satisfied.” *Id.* at 394, 336 P.3d at 801. This question of how water is counted or credited toward the fill of water rights is the key question to be resolved and is the question that should be addressed in this proceeding.

Dated this 20<sup>th</sup> day of May, 2015.



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GARY SPACKMAN  
Director

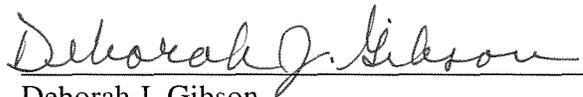
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of May 2015, I served the foregoing to the following and by the method indicated below:

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Idaho Department of Water Resources