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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

**EXPERT WITNESS DISCLOSURE OF  
BOISE PROJECT BOARD OF  
CONTROL, NEW YORK IRRIGATION  
DISTRICT, FARMERS UNION DITCH  
CO. AND DITCH COMPANIES**

COMES NOW, the Boise Project Board of Control, the New York Irrigation District, the Farmers Union Ditch Co. and Ditch Companies, by and through their respective counsel of record, in accordance with IRCP 26(b)(4)(A), and hereby disclose the following individual, who may be called as an expert witness at the trial of this matter.

**EXPERT WITNESS DISCLOSURE OF BOISE PROJECT BOARD OF CONTROL,  
NEW YORK IRRIGATION DISTRICT, FARMERS UNION DITCH CO. AND DITCH  
COMPANIES**

David B. Shaw  
ERO Resources Corp.  
4001 East Main Street  
Emmett, ID 83617

Mr. Shaw's qualifications, a list of publications he authored within the preceding ten years, and a list of other cases in which he has testified as an expert at trial or by deposition within the preceding four years, are identified in his resume attached hereto as Exhibit A.

Mr. Shaw is compensated at an hourly rate of \$138.00 per hour for his work on this case.

Mr. Shaw reviewed hydrologic and related records of the U.S. Geological Survey, U.S. Bureau of Reclamation, Idaho Department of Water Resources and Water District 63 relating to storage and flows in the Boise River and to Arrowrock Reservoir, Anderson Ranch Reservoir, and Lucky Peak Reservoir for irrigation storage, flood control and other uses. He has reviewed the accounting records for storage accounting in the Boise River Reservoirs, including the daily accounting records for years when they are available, and the *Memoranda* prepared at the Director's request by staff hydrologists regarding accounting and distribution of water to on stream reservoirs in Water District 63 and Water District 01. He is familiar with similar hydrologic records from Water District 01 from his work in the storage proceedings in Basin 01.

Mr. Shaw has been retained to assist these parties in Basin 63 on two primary issues. First, the Director has directed water users to submit their "concerns and/or objections" regarding water accounting. Second, the Director has stated that the question of how water is counted or credited toward the fill is the "key" question.

Mr. Shaw is expected to provide testimony explaining the concerns and objections of the water users with the accounting of water rights, as the accounting is currently interpreted. Specifically, he is expected to explain the need to coordinate the accounting program with and how the accounting procedure was derived from the Water Control Manual. Mr. Shaw may

**EXPERT WITNESS DISCLOSURE OF BOISE PROJECT BOARD OF CONTROL,  
NEW YORK IRRIGATION DISTRICT, FARMERS UNION DITCH CO. AND DITCH  
COMPANIES**

explain how the Department's use of the Basin 63 accounting program, including the concepts of "paper fill", "unallocated storage" and "excess flows", varies from the approach to storage fill identified in the Water Control Manual, without any rationale or explanation.

Mr. Shaw may explain how the Department's daily accounting records show that manual resetting of the daily accounting records for the storage rights has occurred, indicating that manual resetting is a way the Department has used and can continue to use the accounting program to accommodate reservoir fill.

Mr. Shaw may explain how resetting of the storage rights in the accounting program on August 15<sup>th</sup>, after the day of allocation, turns the water rights back on in the program and reflects the beginning of physical storage of water pursuant to the storage water rights for the following water year.

Mr. Shaw may explain how water that is categorized and assigned by the accounting program to the "unallocated storage" account is allocated to the existing storage water right accounts, and how the "unallocated storage" accounting concept can be used to reflect the actual physical fill of the storage right accounts.

Mr. Shaw may explain how the accounting method fills storage right accounts on the "day of allocation," and how this accounting concept can be used to recognize fill of the storage rights.

Mr. Shaw may explain how the concept of "paper fill," as that term is used in the accounting program, is not and does not have to be synonymous with complete satisfaction of a water right.

Mr. Shaw has reviewed the Technical Memorandum prepared by staff at the Director's request and may explain how and why the important question asked by the Director of "why" the

accounting program was developed was not adequately explained either in the technical memo or in the accounting procedures.

Mr. Shaw may discuss the accounting program's failure to include a mechanism for dealing with conditions placed on water rights in Water District 63 and may provide recommendations for the correction of those omissions.

Mr. Shaw may also provide specific recommendations on modifying the program to properly accommodate existing storage rights by modifying treatment of storage releases.

Mr. Shaw may also provide additional analysis and opinions regarding additional information obtained through discovery, and respond to opinions offered by other experts and to exhibits and testimony offered by other parties or by the Department itself, if any, in this contested case.

DATED this 19<sup>th</sup> day of June, 2015.

**BARKER ROSHOLT & SIMPSON LLP**



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Albert P. Barker  
Attorneys for Boise Project Board of Control

**SAWTOOTH LAW OFFICES, PLLC**



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Daniel V. Steenson  
S. Bryce Farris  
Andrew J. Waldera  
Attorneys for Ditch Companies

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19<sup>th</sup> day of June, 2015, I caused to be served a true and correct copy of the foregoing **EXPERT WITNESS DISCLOSURE OF BOISE PROJECT BOARD OF CONTROL, NEW YORK IRRIGATION DISTRICT, FARMERS UNION DITCH CO. AND DITCH COMPANIES** by the method indicated below, and addressed to each of the following:

Original to:

Idaho Department of Water Resources	<input type="checkbox"/>	Hand Delivery
Water Management Division	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
322 E. Front Street	<input type="checkbox"/>	Facsimile
P.O. Box 83720	<input type="checkbox"/>	Overnight Mail
Boise, Idaho 83720-0098	<input type="checkbox"/>	Email

Copies to the following:

Erika E. Malmen	<input type="checkbox"/>	Hand Delivery
PERKINS COIE LLP	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
1111 West Jefferson St., Ste. 500	<input type="checkbox"/>	Facsimile
Boise, ID 83702-5391	<input type="checkbox"/>	Overnight Mail
<a href="mailto:emalmen@perkinscoie.com">emalmen@perkinscoie.com</a>	<input checked="" type="checkbox"/>	Email

David Gehlert, Esq.	<input type="checkbox"/>	Hand Delivery
U.S. Dept. of Justice	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Denver Field Office	<input type="checkbox"/>	Facsimile
999 18 <sup>th</sup> Street, South Terrace	<input type="checkbox"/>	Overnight Mail
Suite 370	<input checked="" type="checkbox"/>	Email
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Albert P. Barker

# EXHIBIT A

## **RESUME**

**David Shaw, Engineer/Principal**

### **EDUCATION**

M.S. 1972, Agricultural Engineering, University of Idaho

B.S. 1966, Agricultural Engineering, University of Idaho

### **CERTIFICATIONS AND AFFILIATIONS**

National Council of Examiners for Engineering and Surveying, NCEES #16269

American Society of Agricultural and Biological Engineers

U.S. Committee on Irrigation and Drainage

Idaho Society of Professional Land Surveyors

Idaho Certified Water Right Examiner

Oregon Certified Water Right Examiner, #74051WRE

### **LICENSURE**

Professional Engineer and Land Surveyor, Idaho, #2648

Professional Engineer, Oregon, #74051PE

Professional Engineer, Arizona, #40134

Professional Engineer, Colorado, #415169

### **BACKGROUND**

David is an engineer and principal in the Denver-based natural resources consulting firm of ERO Resources Corporation (ERO). For 17 years, David has managed ERO's Idaho office. He specializes in the identification, analysis, and resolution of water issues including coordination with other professionals in multidisciplinary projects. David has more than 35 years of experience and expertise in water resources and management, covering a broad spectrum of disciplines including surface and ground water supply and use studies, water right evaluations, water quality evaluation and monitoring, project management, alternative dispute resolution, litigation support and expert witness testimony, and technical input on legislative and administrative matters.

### **SUMMARY OF EXPERIENCE**

#### ***Water Right Investigations***

For 11 years, acted as project manager for IDWR's role in the SRBA. An understanding of water rights and management ability were essential for the successful development of the criteria and process for the identification and evaluation of 170,000 claims to water rights. David continues to assist clients with water right investigations including adjudication and administrative processing, evaluation and transfer, and the development of new rights and protection of senior rights.

***Litigation Support and Alternative Dispute Resolution***

Designated as an expert in water right adjudications by the SRBA court. Provides expert testimony before the court on all aspects of water right adjudications as well as hydrology and water right administration issues. Provides expert testimony and settlement support for storm water conflicts and right-of-way issues between water users and nonwater users.

***Water Supply Evaluations, Development, and Permitting***

Assists clients with the permitting and development of water uses. A water supply evaluation is required for most new water right filings and for many filings for changes. Delivery system designs are sometimes included with the development and supply evaluations.

***Water Quality Evaluation, Monitoring, and Management***

Experienced in designing and implementing water quality monitoring programs for various water users. This includes knowledge of state standards and Total Maximum Daily Load requirements, and how water users can help protect their water uses with water quality data.

Project Experience:

**Water Right Investigations**

*Surface Water Coalition, ID*

Provided analysis and recommendations for resolution of water delivery call by senior surface water users against junior ground water users. Analyzed historical water distribution practices for delivery of storage and natural flow water to preserve historical enjoyment of the water resource.

*Snake River Basin Adjudication, ID*

Developed criteria and procedures to investigate the existence and extent of tens of thousands of water rights.

*Little Land and Livestock, Inc., ID*

Evaluated water rights for a potential land purchase. Secured new water rights for development of additional land for irrigated agriculture. Provided technical analysis to resolve conflicts between potential new water use and existing water uses.

*Modoc Point Irrigation District, OR*

Determined the extent of water use for irrigation in support of water right claims in the Klamath River Adjudication.

## **Litigation Support and Alternative Dispute Resolution**

### *Office of the Idaho Attorney General, ID*

Designated by the SRBA court as an expert in water right adjudications. Provided mediation support for resolution of federal reserved water rights. Acted as hydrology expert for litigation of federal reserved water right claims.

### *Surface Water Coalition, ID*

Provided mediation support and expert testimony in support of water delivery call by senior surface water users.

### *Settlers Irrigation District, ID*

Provided mediation support and expert testimony to resolve conflict over irrigation district rights-of-way and encroachment from storm water discharge.

### *Middle Fork Lodge, ID*

Provided expert testimony to establish right-of-way for water delivery prior to creation of a wilderness area and designation of the forest.

### *Shoshone-Bannock Reserved Water Right Negotiations, ID*

Acted as co-chair of the state, Indian, federal, and private technical advisory committee.

### *Riddle Ranch, ID*

Served as technical expert/negotiator for resolution of federal reserved water rights of the Duck Valley Indian Reservation.

### *Methow Valley Ditch Users Association, WA*

Analyzed ground water/surface water interaction and supply.

### *Federal Instream Flow Coalition, ID*

Provided mediation support for resolution of federal reserved water rights and Endangered Species Act water demands.

### *Idaho Office of the Attorney General, ID*

Acted as hydrology expert for litigation of federal reserved water rights.

## **Water Supply Evaluations, Development, and Permitting**

### *Idaho Office of the Attorney General, ID*

Evaluated the surface water supply of a river drainage basin for equitable allocation among state law-based water right water users and federal reserved-based water right water users.

### *Surface Water Coalition, ID*

Evaluated the impact of surface water supply by the diversion and use of ground water.

*Idaho Power Co., ID*

Evaluated the impact of the proposed development of the company's water supply for power generation.

*Big Lost River Basin, ID*

Provided expertise regarding the surface and ground water hydrology and the administration requirements for a ground water recharge project.

*District Water Supply, Boise River, ID*

Evaluated the impact of a proposed water right transfer on irrigation. Identified and quantified changes to ground and surface water supply if the transfer was approved.

*City of Coeur d' Alene, ID*

Prepared an application for consolidation of all city water rights to allow for full use of the water rights and development of a new well.

*Federal Instream Flow Coalition, ID*

Evaluated the hydrologic impact of the historical water development in southern Idaho on river flows for Endangered Species Act-listed salmonids.

**Water Quality Evaluation, Monitoring, and Management**

Pioneer Irrigation District, ID

Provided project design, implementation, and management for their water quality sampling program.

Wilder Irrigation District, ID

Provided project design, implementation, and management for their water quality sampling program.

Water Users in Owyhee County, ID

Provided project design, implementation, and management for their water quality sampling program.

Publications, Testimony and Compensation for David B. Shaw  
June 2015

Publications in the Past Ten Years

None.

Testimony in the Past Four Years

In Re SRBA, Case No. 39576 Subcase: 29-12052 (Accounting of all Ground Water Rights Entitled to the Protections of Paragraph 29-12052.X.C of the Fort Hall Consent Decree)

In the Matter of Application for Transfer No. 78356 (Shekinah Industries); Application for Transfer No. 78355 (Orchard Ranch); Application for Permit No. 63-32499 (Mayfield Townsites); Application for Permit No. 61-12095 (Nevid-Corder); Application for Permit No. 61-12096 (Nevid); Application for Permit No. 63-32703 (Orchard Ranch); Application for Permit No. 61-12256 (Intermountain Sewer and Water); Application for Permit No. 63-33344 (ARK Properties – Mayfield Townsite)

In the Matter of Friend, et.al. v Nettleton, Elmore County Case CV-2013-1197

Compensation

David Shaw's current billing rate is one-hundred thirty-eight dollars (\$138) per hour.