

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

<b>IN THE MATTER OF ACCOUNTING</b>	)	
<b>FOR DISTRIBUTION OF WATER</b>	)	<b>ORDER DENYING UNITED</b>
<b>TO THE FEDERAL ON-STREAM</b>	)	<b>WATER’S MOTION IN LIMINE</b>
<b>RESERVOIRS IN WATER</b>	)	
<b>DISTRICT 63</b>	)	
	)	

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**BACKGROUND**

On August 7, 2015, United Water Idaho, Inc. (“United Water”), filed with the Director (“Director”) of the Idaho Department of Water Resources (“Department”) *United Water’s Motion in Limine* (“Motion”) pursuant to Rule 600 of the Department’s Rules of Procedures (IDAPA 37.01.01.600). United Water seeks an order prohibiting the introduction of certain exhibits identified in the Irrigation Entities’<sup>1</sup> *Joint List of Exhibits for Hearing* relating to United Water’s water rights. *Motion* at 2. United Water also seeks an order prohibiting Edward Squires from presenting any evidence, through testimony or otherwise, concerning United Water’s Water Rights. *Id.* United Water argues:

This contested case proceeding does not involve questions about the nature, extent, or interpretation of United Water’s Water Rights (let alone any other natural flow water rights) or how they should be licensed or administered. Since its inception, the Director has consistently stated that this proceeding concerns only the Department’s accounting methods for the storage water rights associated with the Boise River’s three federal on-stream reservoirs. The Director must prohibit the Irrigators from introducing evidence or argument outside the limited scope of this proceeding.

*Id.* at 2-3(emphasis in original)(footnote omitted). United Water argues “there is no reason to look at any other water rights to determine how water is or should be counted or credited toward the fill of the federal on-stream storage water rights.” *Id.* at 14 (emphasis in original).

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<sup>1</sup> The Irrigation Entities are comprised of the Boise Project Board of Control, Ballentyne Ditch Company, Boise Valley Irrigation Ditch Company, Canyon County Water Company, Eureka Water Company, Farmers’ Co-operative Ditch Company, Middleton Mill Ditch Company, Middleton Irrigation Association, Inc., Nampa & Meridian Irrigation District, New Dry Creek Ditch Company, Pioneer Ditch Company, Settlers Irrigation District, South Boise Water Company, Thurman Mill Ditch Company, Pioneer Irrigation District, New York Irrigation District and Farmers Union Ditch Company, Ltd. (collectively, the “Irrigation Entities”).

On August 13, 2015, the Irrigation Entities responded to the Motion by filing a *Memorandum in Opposition to United Water's Motion in Limine* ("Response") whereby they argue that United Water's Motion should be denied because the evidence and testimony the Irrigation Entities have identified and intend to offer at the hearing in this proceeding are directly related to the defined question to be addressed and that prohibiting this evidence would exclude and frustrate the development of the record, violating the IDAPA 37.01.01.600. *Response* at 4.

### ANALYSIS

Rule 600 of the Department's Rules of Procedure provides, in relevant part, "The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho."

The scope of this proceeding is narrow. The *Notice of Contested Case and Formal Proceedings, and Notice of State Conference* ("Notice"), which commenced this proceeding, clearly states this proceeding shall focus on how water is counted or credited toward the fill of the three federal on-stream reservoirs on the Boise River.<sup>2</sup> *Notice* at 4. The proceeding was commenced because certain water users in Water District 63 "have questioned or objected to the accounting methodologies and procedures for 'counting' or 'crediting' water towards the satisfaction or 'fill' of the water rights for the federal onstream reservoirs in ... Water District 63." *Id.* at 2. As stated in the Notice:

No formal administrative record has been developed to document how and why existing accounting procedures 'count' or 'credit' water towards the satisfaction or 'fill' of the water rights for the federal on-stream reservoirs in Water District 1 or those in Water District 63. The existing 'records' on these matters are scattered and incomplete. It is therefore desirable to develop administrative records fully documenting how and why existing accounting methods and procedures 'count' or 'credit' water towards the water rights for the federal on-stream reservoirs in ... Water District 63.

*Notice* at 3.

Much of the information sought to be introduced by the Irrigation Entities is likely irrelevant to this proceeding. For example, it is hard to see how pre-licensing documents related to United Water's water rights are relevant to how water is counted or credited towards the water rights for the federal on-stream reservoirs in Water District 63. However, the Director cannot say that there is "no reason to look at any other water rights to determine how water is or should be counted or credited toward the fill of the federal on-stream storage water rights" as argued by United Water. It is too broad of a statement to say all information related to other water rights is irrelevant in every circumstance. The information must be evaluated as it is presented in the administrative hearing so that its relevancy can be considered in the proper context. Thus, the Director will deny United Water's Motion but will reconsider the issue if an objection is raised during the administrative hearing.

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<sup>2</sup> The storage water rights associated with the Boise River's three federal on-stream reservoirs are: 63-303 and 63-3613 for Arrowrock reservoir; 63-3614 for Anderson Ranch reservoir; and 63-3618 for Lucky Peak reservoir.

**ORDER**

Based upon the foregoing, the Director DENIES *United Water's Motion in Limine*.

Dated this 24<sup>th</sup> day of August 2015.

A handwritten signature in blue ink that reads "Gary Spackman". The signature is written in a cursive style and is positioned above a horizontal line.

GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of August 2015, I served the foregoing to the following and by the method indicated below:

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