STIPULATION

This Stipulation is made and entered into among the parties to Snake River Basin Adjudication ("SRBA") subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, 63-33738, and the parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 (collectively, "Parties").[1] The Parties, by and through their counsel of record, hereby stipulate and agree as follows:

1. The purpose of this Stipulation is to facilitate and expedite resolution of all disputes among the Parties that have arisen in various judicial and administrative proceedings pertaining to issues of the "fill" and/or "refill" of the storage water rights for on-stream reservoirs in Idaho Department of Water Resources ("Department" or "IDWR") Administrative Basin 63, known as Arrowrock, Anderson Ranch and Lucky Peak Reservoirs ("Boise River Reservoirs"), including but not limited to: SRBA subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; and the administrative and judicial proceedings underlying these same appeals and cross-appeals.

2. The parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 stipulate and agree to jointly support passage of legislation during the 2019 Regular Legislative Session for the purpose of statutorily supporting

[1] The Director of the Idaho Department of Water Resources ("Director") and the Idaho Department of Water Resources ("Department" or "IDWR") are not "parties" to the SRBA, but are parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017. The Director is included, acting for the Department, as a bound signatory to this Stipulation because the Director is vested with the direction and control of the distribution of water from all natural water sources within a water district pursuant to Idaho Code § 42-602, and is a party to the referenced appeals and cross-appeals.

the "Enactment Remark" set forth in paragraph 3 below. The parties to the appeals and cross appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 agree to support consideration by the Idaho legislature of the proposed legislation in **Attachment A** attached hereto with only those changes to which all Parties have expressly consented in writing.[2]

3. If the proposed legislation referenced above in paragraph 2 ***becomes*** law on or before the adjournment of the 2019 Regular Legislative Session, and with only those changes to which all Parties have expressly consented in writing, the Parties stipulate and agree the remark in the "Priority Date" element of water right no. 63-33734A shall be as follows (the "Enactment Remark"):

> This water right is subordinate to all water rights established pursuant to Idaho law for uses within the IDWR Administrative Basin 63, except water rights to store more than 1,000 acre feet of surface water permitted or licensed after April 15, 2019. This water right shall not be administered as subordinate to water rights permitted or licensed for managed ground water recharge after April 15, 2019 or any water rights for the storage or use of water for power purposes.

Alternatively, if the legislation in **Attachment A** ***does not become*** law on or before the adjournment of the 2019 Regular Legislative Session, the Parties stipulate and agree the remark in the "Priority Date" element of water right no. 63-33734A shall be as follows (the "Non-Enactment Remark"):

> This water right is subordinate to all water rights established pursuant to Idaho law for uses within the IDWR Administrative Basin 63. This water right shall not be administered as subordinate to water rights permitted or licensed for managed ground water recharge after April 15, 2019 or any water rights for the storage or use of water for power purposes.

4. The Parties stipulate and agree that these alternative remarks are set forth in the

[2] As set forth in paragraphs 3, 4, 5, 6, and 7 of this Stipulation, the Parties have stipulated and agreed to two alternative remarks for the "Priority Date" element of water right no. 63-33734A. The Parties have further stipulated and agreed that the remark to be decreed depends on whether the proposed legislation set forth in **Attachment A** becomes law on or before the adjournment of the 2019 Regular Legislative Session, and with only those changes to which all Parties have expressly consented in writing. The two alternative forms of the partial decree for water right no. 63-33734A are included in **Attachment B** and **Attachment C.** The Parties have further stipulated and agreed that water right no. 63-33734B should be decreed in the form included in **Attachment D** regardless of whether the proposed legislation is approved.

"Enactment Remark" version and "Non-Enactment Remark" version of the two alternative partial decrees for water right no. 63-33734A, which are included in **Attachment B** and **Attachment C**.

5. The Parties stipulate and agree that they will support issuance of the "Enactment Remark" version of the partial decree for water right no. 63-33734A if the proposed legislation in **Attachment A** ***becomes*** law on or before the adjournment of the 2019 Regular Legislative Session, and with only those changes to which all Parties have expressly consented in writing. The Parties stipulate and agree that they will support issuance of the "Non-Enactment Remark" version of the partial decree for water right no. 63-33734A if the proposed legislation in **Attachment A** ***does not become*** law on or before the adjournment of the 2019 Regular Legislative Session.

6. The Parties stipulate and agree that they will support issuance of the proposed partial decree for water right no. 63-33734B included in **Attachment D**, and that the partial decree for water right no. 63-33734B is ***not*** dependent upon legislative action.

7. The Parties further stipulate and agree to the following:

a. No more than seven (7) days after formal execution of this Stipulation by all Parties except the United States,[3] the parties to the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 will file with the Idaho Supreme Court joint motions of the form attached hereto in **Attachment E** that request re-scheduling oral argument of the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 for the first oral argument setting available after November 30, 2019.

b. Within seven (7) days after adjournment of the 2019 Regular Legislative Session or the

[3] The United States has informally expressed that it has no objection to the Stipulation, but may not formally execute the Stipulation without authorization from the U.S. Department of Justice.

legislation attached hereto as Attachment A becoming law, and with only those changes to which all Parties have expressly consented in writing, whichever occurs first, the State of Idaho will file in the SRBA "main case" no. 39576 the following motions, which all Parties stipulate and agree to support as a full and final resolution of SRBA water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738[4]:

i. a motion to decree water right no. 63-33734B and to decree as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738 of the form set forth in **Attachment D**; and

ii. a motion to alter or amend the partial decrees for water rights nos. 63-303, 63-3613, 63-3614, and 63-3618 of the form set forth in **Attachment F**, requesting that the partial decrees be modified to include in their "Quantity" elements the following combined volume limit condition, and in their "Other Provisions" elements the following "reset" condition:

   a. Combined Volume Limit Condition: Water rights nos. 63-303, 63-3613, 63-3614, 63-3618, 63-33734A, and 63-33734B, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.

   b. Reset Condition: The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided, however, the annual time period will begin (1) after the day of allocation and when there is no natural flow

[4] A copy of this Stipulation (including the Attachments) will be appended to the motions to be filed in the SRBA.

available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier; and

iii. a motion to decree water right no. 63-33734A, of the form set forth in either **Attachment B** or **Attachment C**, depending on whether the proposed legislation set forth in **Attachment A** ***becomes*** law on or before the adjournment of the 2019 Regular Legislative Session, and with only those changes to which all Parties have expressly consented in writing:

a. if the proposed legislation set forth in **Attachment A** ***becomes*** law on or before the adjournment of the 2019 Regular Legislative Session, and with only such changes to which the Parties have expressly consented in writing, then the State will file and the Parties will support a motion to decree water right no. 63-33734A of the form set forth in **Attachment B**;

b. alternatively, if the proposed legislation set forth in **Attachment A** ***does not become*** law on or before the adjournment of the 2019 Regular Legislative Session, and with only such changes to which the Parties have expressly consented in writing, then the State will file and the Parties will support a motion to decree water right no. 63-33734A of the form set forth in **Attachment C.**

8. In supporting the issuance of the partial decree for water right no. 63-33734B as set forth in **Attachment D**, the Parties agree the annual volume defined in the quantity element of that partial decree does not constitute an admission by any Party or a finding by the Court of the number of acres entitled to receive storage water from the Boise River Reservoirs.

9. The Parties stipulate and agree that they will not seek any changes in the proposed partial decrees included in **Attachments B, C,** or **D,** or the proposed legislation set forth in **Attachment A,** without having first obtained the express written consent of all the Parties to the change(s) sought.

10. The Parties stipulate and agree that they will not object to or appeal the SRBA Court's issuance of partial decrees for water right nos. 63-33734A and 63-33734B that are materially consistent with the motions filed pursuant to paragraph 7.b.i and 7.b.iii above, and any additional or subsequent express written agreement of the Parties.

11. The Parties stipulate and agree that they will not object to or appeal the decrees of disallowance of water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-337378 entered by the SRBA Court in accordance with the motion filed pursuant to paragraph 7.b.i above.

12. The Parties stipulate and agree that they will not object to or appeal the SRBA Court's amendment of the partial decrees for water rights nos. 63-303, 63-3613, 63-3614, and 63-3618 in accordance with the motion filed pursuant to paragraph 7.b.ii above. The Parties also stipulate and agree they will not seek any other amendments of the partial decrees for water rights nos. 63-303, 63-3613, 63-3614, and 63-3618 other than those described above in paragraph 7.b.ii without having first obtained the express written consent of all the Parties to the amendment(s) or change(s) sought.

13. If the SRBA Court issues partial decrees for water right nos. 63-33734A and 63-33734B on or before November 30, 2019 that are materially consistent with the motions filed by the State pursuant to paragraph 7.b.i and 7.b.iii above, the parties to the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 will file with the Idaho Supreme Court, within seven (7) days of the issuance of the partial decrees for water right nos. 63-33734A and 63-33734B, joint motions of the form attached hereto in **Attachment G** that request immediate dismissal of the appeals and cross-appeals pending under Idaho Supreme Court docket

nos. 44677-2016, 44745-2017, and 44746-2017 with instructions to the Twin Falls County District Court to vacate its *Memorandum Decision and Order* (Sep. 1, 2016) and *Order Denying Rehearing* (Nov. 14, 2016), Case no. CV-WA-2015-21376 (Consolidated Ada County Case No. CV-2015-21391).

14. If the SRBA does ***not*** issue partial decrees for water right nos. 63-33734A and 63-33734B on or before November 30, 2019 that are materially consistent with the motions filed by the State pursuant to paragraph 7.b.i and 7.b.iii above, this Stipulation will become null and void and no longer binding, with all Parties retaining all of their rights, positions, and arguments with respect to the disputes referenced in paragraph 1 above; with the sole exception that if the SRBA does ***not*** issue partial decrees for water right nos. 63-33734A and 63-33734B on or before November 30, 2019 that are materially consistent with the motions filed by the State pursuant to paragraph 7.b.i and 7.b.iii above, the Parties stipulate and agree that oral argument of the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 will occur during the first available setting after November 30, 2019 or such other date previously set by the Idaho Supreme Court, and that none of the Parties may seek suspension, stay, continuance, or dismissal of the appeals, cross-appeals, or oral argument thereon.

15. The Parties stipulate and agree that the Department will continue to account for the distribution of water to water rights in Water District 63 as described in the Director's *Amended Final Order* issued on October 20, 2015, in the Contested Case that was the subject of the judicial review proceedings in Case No. CV-WA-2015-21376 (Consolidated Ada County Case No.CV-WA-2015-21391). The Parties stipulate and agree that they will not challenge or object to the Department's use of the Water District 63 water right accounting system to distribute water to water rights in Water District 63 as described in, and consistent with, the Director's *Amended Final Order*. With the

exception of these limitations, the Parties stipulate and agree that SUEZ Water Idaho Inc. and the irrigation organizations bound by this Stipulation reserve their rights under Idaho law to otherwise challenge or object to the distribution of water to water rights in Water District 63.

16. The Parties stipulate and agree that upon issuance of the partial decrees for water right nos. 63-33734A and 63-33734B, the Department will update the Water District 63 water right accounting system to account for the distribution of water to water right nos. 63-33734A and 63-33734B consistent with their partial decrees. The Department will provide the Parties, the Water District 63 Advisory Committee, the Water District 63 Watermaster, and all water right holders in Water District 63 with notice of, and an opportunity to submit comments on, the proposed updates to the accounting system. Any aggrieved Parties may request a contested case on these matters, but such a contested case will be limited to preclude raising any issues raised or addressed in the Contested Case that was the subject of the judicial review proceedings in Case No. CV-WA-2015-21376 (Consolidated Ada County Case No.CV-WA-2015-21391).

17. For all future material modifications of the Water District 63 water right accounting system IDWR will provide notice and an opportunity to comment on the change(s). Any party aggrieved by the Director's action in making a material modification has the right to request a contested case in accordance with Idaho Code § 42-1701A and the provisions and standards set forth in chapter 52, title 67, Idaho Code.

18. The Parties stipulate and agree that the Department will update the Water District 63 water right accounting system to account for the distribution of water pursuant to conditions on water rights authorizing diversions when the Boise River below Lucky Peak Dam is "on flood release."

19. No provision of this Stipulation shall be construed to modify or require the United States to change the reservoir operating plan as defined in the November 20, 1953 Memorandum of

Agreement Between the Department of the Army and the Department of the Interior for Flood Control Operation of Boise River Reservoirs, Idaho (hereinafter "MOA") and the 1985 Memorandum of Understanding for Confirmation, Ratification, and Adoption of the Water Control Manual—Boise River Reservoirs, Boise, Idaho (hereinafter "Manual"). No provision of this Stipulation shall modify the rights or obligations of the United States or the Arrowrock, Anderson Ranch, and Lucky Peak spaceholders pursuant to the MOA and Manual, federal law or contracts between the United States and the spaceholders. No provision of this Stipulation shall be construed to bind the State of Idaho to the MOA or Manual or to require the Director or the Department to distribute water pursuant to the MOA or Manual.

20. Nothing in this Stipulation or its Attachments limits the Attorney General from developing or providing legal opinions as authorized by Idaho law.

21. Nothing in this Stipulation, including the stipulated entry of partial decrees or other evidence or pleading submitted or relied upon for approval of the Stipulation, or any offers or compromises made in the course of negotiating the Stipulation, shall be construed as admissions against interest or used as evidence to support or oppose any party's claims or objections in the SRBA, in any other water rights adjudication, or in any administrative proceedings before the Department, other than those for interpretation, enforcement or administration of the Stipulation or the partial decrees or for a purpose contemplated by Rule 408.

22. Each of the undersigned represent that they are authorized to execute this Stipulation on behalf of the entity they represent.

23. Nothing in this Stipulation shall be construed as creating liability against the United States, the State of Idaho or any of its agencies for any claims related to or arising from flood control operations.

24. This Stipulation may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

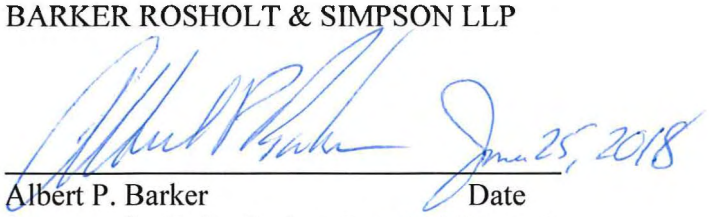
25. This Stipulation shall become effective and binding on all Parties except the United States upon execution by all signatories except the United States. This Stipulation shall become effective and binding on the United States upon execution by the United States.

UNITED STATES DEPT. OF JUSTICE

_____

David Gehlert Date
Attorney for United States
Bureau of Reclamation

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker Date
Attorney for Boise Project Board of Control.

SAWTOOTH LAW OFFICES, PLLC

Daniel V. Steenson 6-26-18

Daniel V. Steenson Date

Attorney for 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; Pioneer Irrigation District; Settlers Irrigation District; South Boise Water Company; and Thurman Mill Ditch Company

NEW YORK IRRIGATION DISTRICT

Chas McDevitt Law Date
Attorney for New York Irrigation District

GIVENS PURSLEY, LLP

6/25/18

Christopher H. Meyer Date
Attorney for SUEZ Water Idaho Inc. (formerly United Water Idaho)

IDAHO ATTORNEY GENERAL'S OFFICE

7/02/2018

Darrell G. Early — Date
Deputy Attorney General
Attorney for State of Idaho

IDAHO DEPARTMENT OF WATER RESOURCES

Gary Spackman 6/25/2018

Gary Spackman Date
Director
Idaho Department of Water Resources

ATTACHMENT A

DRAFT

DRKAG217

LEGISLATURE OF THE STATE OF IDAHO

Sixty-fourth Legislature Second Regular Session - 2018

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO WATER; AMENDING CHAPTER 1, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-115, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL SUBORDINATE PERMITS AND LICENSES FOR CERTAIN PROJECTS ISSUED AFTER A SPECIFIED DATE TO THE CAPTURE AND RETENTION OF WATER IN EXISTING ON-STREAM STORAGE RESERVOIRS DURING AND FOLLOWING FLOOD CONTROL OPERATIONS UNTIL THE DATE OF ALLOCATION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 1, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-115, Idaho Code, and to read as follows:

42-115. STORAGE. To ensure that new or proposed projects to store more than one thousand (1,000) acre feet of surface water do not interfere with the storage of water in existing on-stream storage reservoirs operated for storage and flood control purposes, the director of the department of water resources shall subordinate permits and licenses for projects to store more than one thousand (1,000) acre feet of surface water issued after the effective date of this section to the capture and retention of water in existing on-stream storage reservoirs during and following flood control operations until the date of allocation.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

WATER - Adds to existing law to provide that the Director of the Department of Water Resources shall subordinate permits and licenses for certain projects issued after a specified date to the capture and retention of water in existing on-stream storage reservoirs during and following flood control operations until the date of allocation.

ATTACHMENT B

STIPULATION ATTACHMENT B – MOTION TO DECREE REFILL1
ENACTMENT VERSION

LAWRENCE G. WASDEN
Attorney General
DARRELL G. EARLY
Deputy Attorney General
Chief, Natural Resources Division
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Attorneys for the State of Idaho

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	**MOTION TO DECREE WATER RIGHT NO. 63-33734A**
Case No. 39576	)	

MOTION

The State of Idaho ("State"), by and through its attorneys of record, pursuant to Administrative Order 1, the Idaho Rules of Civil Procedure, and the "Stipulation" appended hereto as **Exhibit 1** ("Stipulation"), hereby moves this Court for an order issuing a partial decree for water right no. 63-33734A in the form attached hereto as **Exhibit 2**.

DISCUSSION

The parties to SRBA subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738, and the parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, have entered into a Stipulation for the purpose of facilitating and expediting resolution of disputes that have arisen in various judicial and administrative proceedings pertaining to issues of the "fill" and/or "refill" of the storage water rights for the on-stream reservoirs in IDWR Administrative Basin 63 (Boise River Basin), including but not limited to: the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; the administrative and judicial proceedings underlying these same appeals and cross-appeals; and Snake River Basin Adjudication ("SRBA") subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. *See* **Exhibit 1**.

The parties have agreed to seek issuance in the SRBA of partial decrees for water right nos. 63-33734A and water right no. 63-33734B of the forms proposed by this motion and the concurrently filed motion to decree water right no. 63-33734B.[1] The parties have also agreed to seek orders decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

Under the Stipulation, the form of the proposed partial decree for water right no.

[1] Pursuant to the Stipulation, the State is also filing on this date: (1) a motion for an order issuing a partial decree for water right no. 63-33734B and decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; and (2) a motion to alter or amend the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

63-33734A to be submitted to this Court depended on whether certain legislation was enacted during the 2019 Regular Legislative Session. *See* **Exhibit 1**. That legislation has been enacted, and the State therefore moves this Court for an order issuing a partial decree for water right no. 63-33734A of the form appended hereto as **Exhibit 2**.

If this Court issues partial decrees for water right nos. 63-33734A and 63-33734B that are materially consistent with the forms of proposed partial decrees appended to the motions filed by the State pursuant to the Stipulation, the parties have agreed to jointly move the Idaho Supreme Court for dismissal of the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, with instructions to this Court to vacate the orders that are the subject of the appeals and cross-appeals. If this Court does not issue partial decrees materially consistent with the partial decrees proposed by the State pursuant to the Stipulation, the parties have agreed the appeals and cross-appeals will proceed to oral argument on the first available date after November 30, 2019. *See* **Exhibit 1**.[2]

For this reason, time is of the essence and the State therefore requests expeditious consideration of this motion, so that it can be noticed, any potential objections resolved, and a partial decree issued, no later than November 30, 2019. *See* **Exhibit 1**. Because this motion is related to the concurrently-filed motions required by the Stipulation,[3] all of

[2] The Idaho Supreme Court has granted motions to suspend the appeals and reschedule oral argument on the appeals and cross-appeals for the first available setting after November 30, 2019.

[3] *See supra* note 1.

the motions should be noticed and considered together. It is for this reason that the motions are being filed in the "main" SRBA case (case no. 39576) rather than in individual subcases only.

CONCLUSION

For the reasons discussed herein and in the Stipulation appended hereto under **Exhibit 1**, the State respectfully requests that this Court enter an order issuing a partial decree for water right no. 63-33734A of the form appended hereto as **Exhibit 2**.

[SIGNATURE BLOCK & CERTIFICATE OF SERVICE]

Exhibit 1

(Copy of "Stipulation" and Attachments)

Exhibit 2

(Form of Partial Decree for "Enactment Version" of Water Right No. 63-33734A)

"Exhibit 2" to "Attachment B"

06/20/2018

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33734A

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 3,672,732.00 AFY

Water rights nos. 63-33734A, 63-303, 63-3613, 63-3614, 63-3618, and 63-33734B, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.

PRIORITY DATE: 9/30/1965

This water right is subordinate to all water rights established pursuant to Idaho law for uses within the IDWR Administrative Basin 63, except water rights to store more than 1,000 acre feet of surface water permitted or licensed after April 15, 2019. This water right shall not be administered as subordinate to water rights permitted or licensed for managed ground water recharge after April 15, 2019 or any water rights for the storage or use of water for power purposes.

POINT OF DIVERSION: T02N R03E S11 SENE Lot 7 Within ADA County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION STORAGE	01/01 12/31	3,672,732.00 AFY
MUNICIPAL/INDUSTRIAL STORAGE	01/01 12/31	3,672,732.00 AFY
STREAMFLOW MAINTENANCE STORAGE	01/01 12/31	3,672,732.00 AFY

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage end uses as provided in the contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

PLACE OF USE: Place of use is on those lands identified under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or

percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.

2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.

3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, and 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.

4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of a final unified decree as it may be amended. Section 42-1412(6),Idaho Code.

5. The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective _XX/XX_, 2018, which is incorporated herein by reference.

6. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.

7. Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.

8. This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

ATTACHMENT C

STIPULATION ATTACHMENT C – MOTION TO DECREE REFILL1
NON-ENACTMENT VERSION

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Attorneys for the State of Idaho

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	**MOTION TO DECREE WATER RIGHT NO. 63-33734A**
Case No. 39576	)	

MOTION

The State of Idaho ("State"), by and through its attorneys of record, pursuant to Administrative Order 1, the Idaho Rules of Civil Procedure, and the "Stipulation" appended hereto as **Exhibit 1** ("Stipulation"), hereby moves this Court for an order issuing a partial decree for water right no. 63-33734A in the form attached hereto as **Exhibit 2.**

DISCUSSION

The parties to SRBA subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738, and the parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, have entered into a Stipulation for the purpose of facilitating and expediting resolution of disputes that have arisen in various judicial and administrative proceedings pertaining to issues of the "fill" and/or "refill" of the storage water rights for the on-stream reservoirs in IDWR Administrative Basin 63 (Boise River Basin), including but not limited to: the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; the administrative and judicial proceedings underlying these same appeals and cross-appeals; and Snake River Basin Adjudication ("SRBA") subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. *See* **Exhibit 1**.

The parties have agreed to seek issuance in the SRBA of partial decrees for water right nos. 63-33734A and water right no. 63-33734B of the forms proposed by this motion and the concurrently filed motion to decree water right no. 63-33734B.[1] The parties have also agreed to seek orders decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

Under the Stipulation, the form of the proposed partial decree for water right no.

[1] Pursuant to the Stipulation, the State is also filing on this date: (1) a motion for an order issuing a partial decree for water right no. 63-33734B and decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; and (2) a motion to alter or amend the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

63-33734A to be submitted to this Court depended on whether certain legislation was enacted during the 2019 Regular Legislative Session. *See* **Exhibit 1**. That legislation has *not* been enacted, and the State therefore moves this Court for an order issuing a partial decree for water right no. 63-33734A of the form appended hereto as **Exhibit 2**.

If this Court issues a partial decree for water right no. 63-33734A that is materially consistent with the proposed partial decree appended hereto as **Exhibit 2**, and also issues a partial decree for water right no. 63-33734B that is materially consistent with the form of proposed partial decree appended to the motion to decree water right no. 63-33734B, the parties have agreed to jointly move the Idaho Supreme Court for dismissal of the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, with instructions to this Court to vacate the orders that are the subject of the appeals and cross-appeals. If this Court does not issue partial decrees materially consistent with the partial decrees proposed by the State pursuant to the Stipulation, the parties have agreed the appeals and cross-appeals will proceed to oral argument on the first available date after November 30, 2019. *See* **Exhibit 1**.[2]

For this reason, time is of the essence and the State therefore requests expeditious consideration of this motion, so that it can be noticed, any potential objections resolved, and a partial decree issued, no later than November 30, 2019. *See* **Exhibit 1**. Because

[2] The Idaho Supreme Court has granted motions to suspend the appeals and reschedule oral argument on the appeals and cross-appeals for the first available setting after November 30, 2019.

this motion is related to the concurrently-filed motions required by the Stipulation,[3] all of the motions should be noticed and considered together. It is for this reason that the motions are being filed in the "main" SRBA case (case no. 39576) rather than in individual subcases only.

CONCLUSION

For the reasons discussed herein and in the Stipulation appended hereto under **Exhibit 1**, the State respectfully requests that this Court enter an order issuing a partial decree for water right no. 63-33734A of the form appended hereto as **Exhibit 2**.

[SIGNATURE BLOCK & CERTIFICATE OF SERVICE]

[3] *See supra* note 1.

Exhibit 1

(Copy of "Stipulation" and Attachments)

Exhibit 2

(Form of Partial Decree for "Non-Enactment" Version of Water Right No. 63-33734A)

"Exhibit 2" to "Attachment C"

06/20/2018

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33734A

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 3,672,732.00 AFY

Water rights nos. 63-33734A, 63-303, 63-3613, 63-3614, 63-3618, and 63-33734B, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.

PRIORITY DATE: 9/30/1965

This water right is subordinate to all water rights established pursuant to Idaho law for uses within the IDWR Administrative Basin 63. This water right shall not be administered as subordinate to water rights permitted or licensed for managed ground water recharge after April 15, 2019 or any water rights for the storage or use of water for power purposes.

POINT OF DIVERSION: T02N R03E S11 SENE Lot 7 Within ADA County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION STORAGE	01/01 12/31	3,672,732.00 AFY
MUNICIPAL/INDUSTRIAL STORAGE	01/01 12/31	3,672,732.00 AFY
STREAMFLOW MAINTENANCE STORAGE	01/01 12/31	3,672,732.00 AFY

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage end uses as provided in the contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

PLACE OF USE: Place of use is on those lands identified under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of

the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.

2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, or Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, or Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.

3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, and 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.

4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of a final unified decree as it may be amended. Section 42-1412(6),Idaho Code.

5. The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective _XX/XX_, 2018, which is incorporated herein by reference.

6. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.

7. Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.

8. This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

ATTACHMENT D

STIPULATION ATTACHMENT D – MOTION TO DECREE REFILL2

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Attorneys for the State of Idaho

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA Case No. 39576	**MOTION TO DECREE WATER RIGHT NO. 63-33734B and DISALLOW WATER RIGHT CLAIM NOS. 63-33732, 63-33733, 63-33734, 63-33737, AND 63-33738**

MOTION

The State of Idaho ("State"), by and through its attorneys of record, pursuant to Administrative Order 1, the Idaho Rules of Civil Procedure, and the "Stipulation" appended hereto as **Exhibit 1** ("Stipulation"), hereby moves this Court for: (1) an order rescinding this Court's order recommitting to the Special Master water right claim nos. 63-

33732, 63-33733, 63-33734, 63-33737, and 63-33738[1]; (2) an order issuing a partial decree for water right no. 63-33734B in the form attached hereto as **Exhibit 2**; and (3) orders decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

DISCUSSION

The parties to SRBA subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738, and the parties to the appeals and cross-appeals currently pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, have entered into a Stipulation for the purpose of facilitating and expediting resolution of disputes that have arisen in various judicial and administrative proceedings pertaining to issues of the "fill" and/or "refill" of the storage water rights for the on-stream reservoirs in IDWR Administrative Basin 63 (Boise River Basin), including but not limited to: the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; the administrative and judicial proceedings underlying these same appeals and cross-appeals; and Snake River Basin Adjudication ("SRBA") subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. *See* **Exhibit 1**.

The parties have agreed to seek issuance in the SRBA of partial decrees for water right nos. 63-33734A and water right no. 63-33734B of the forms proposed by this

[1] *Memorandum Decision and Order on Challenge and Order of Recommitment to Special Master, Subcase Nos. 63-33732 (consolidated subcase no. 63-33737), 63-33733 (consolidated subcase no. 63-33738), and 63-33734* (Sep. 1, 2016).

motion and the concurrently filed motion to decree water right no. 63-33734A.[2] The parties have also agreed to seek orders decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. *See* **Exhibit 1**.

If this Court issues partial decrees for water right nos. 63-33734A and 63-33734B that are materially consistent with the forms of proposed partial decrees appended to the motions filed by the State pursuant to the Stipulation, the parties have agreed to jointly move the Idaho Supreme Court for dismissal of the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017, with instructions to this Court to vacate the orders that are the subject of the appeals and cross-appeals. If this Court does not issue partial decrees materially consistent with the partial decrees proposed by the State pursuant to the Stipulation, the parties have agreed the appeals and cross-appeals will proceed to oral argument on the first available date after November 30, 2019. *See* **Exhibit 1**.[3]

For this reason, time is of the essence and the State therefore requests expeditious consideration of this motion, so that it can be noticed, any potential objections resolved, and a partial decree issued, no later than November 30, 2019. *See* **Exhibit 1**. Because this motion is related to the concurrently-filed motions required by the Stipulation,[4] all of

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[2] Pursuant to the Stipulation, the State is also filing on this date: (1) a motion for an order issuing a partial decree for water right no. 63-33734A; and (2) a motion to alter or amend the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

[3] The Idaho Supreme Court has granted motions to suspend the appeals and reschedule oral argument on the appeals and cross-appeals for the first available setting after November 30, 2019.

[4] *See supra* note 2.

the motions should be noticed and considered together. It is for this reason that the motions are being filed in the "main" SRBA case (case no. 39576) rather than in individual subcases only.

CONCLUSION

For the reasons discussed herein and in the Stipulation appended hereto under **Exhibit 1**, the State respectfully requests that this Court enter orders: (1) rescinding this Court's order recommitting to the Special Master water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; (2) issuing a partial decree for water right no. 63-33734B of the form appended hereto as **Exhibit 2**; and (3) decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

[SIGNATURE BLOCK & CERTIFICATE OF SERVICE]

Exhibit 1

(Copy of "Stipulation" and Attachments)

Exhibit 2

(Form of Partial Decree for Water Right No. 63-33734B)

"Exhibit 2" to "Attachment D"

06/20/2018

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33734B

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 587,056.00 AFY

Water rights nos. 63-33734B, 63-303, 63-3613, 63-3614, 63-3618, and 63-33734A are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.

This water right may be exercised only to replace water released for flood control purposes, as determined by the Water District 63 watermaster, supervised by the director of the Department of Water Resources. In determining the timing, duration, and magnitude of flood control releases for the purpose of administering this water right and distributing natural flow in accordance with state law, the watermaster as supervised by the Director will consider, but will not be bound by, the November 20, 1953, "Memorandum of Agreement Between the Department of the Army and the Department of the Interior for Flood Control Operation of Boise River Reservoirs, Idaho" (hereinafter "MOA") and the 1985 "Memorandum of Understanding for Confirmation, Ratification, and Adoption of the Water Control Manual—Boise River Reservoirs, Boise, Idaho" (hereinafter "Manual"). The watermaster as supervised by the Director may also consider, but will not be bound by, the United States' determinations of the purposes for which water is being released from Lucky Peak Dam. The watermaster as supervised by the Director may also consider any other information the Director deems relevant.

The watermaster's determinations, as supervised by the director, of the timing, duration, and magnitude of flood control releases shall not affect or bind the United States' determinations, authority, or discretion under federal law for purposes of operating its reservoirs for flood control purposes in accordance with the 1946 Flood Control Act, 60 Stat 641, as amended or supplemented, and the MOA and Manual as they may be revised pursuant to the forgoing law.

Water will not accrue towards the satisfaction of this water right until the United States of America, acting through the Bureau of Reclamation, has notified the Water District 63 watermaster of the calendar date on which it intends to store water pursuant to this water right. Following initial notification, the United States can provide notification directing the Water District 63 Watermaster to stop and start the accrual of water pursuant to this water right, until the water right has been satisfied. All notifications must be made in writing. Each notification must identify the specific calendar date on which administrative action should occur. The identified calendar date cannot predate the date of written notification.

PRIORITY DATE: 03/16/1973

POINT OF DIVERSION: T02N R03E S11 SENE Lot 7 Within ADA County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION STORAGE	01/01 07/31	587,056.00 AFY

MUNCICIPAL/INDUSTRIAL STORAGE	01/01	07/31	587,056.00 AFY
STREAMFLOW MAINTENANCE STORAGE	01/01	07/31	587,056.00 AFY

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613,63-3614, 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage end uses as provided in contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613,63-3614, and 63-3618.

PLACE OF USE: Place of use is on those lands identified under water right nos. 63-303, 63-3613, and 63-3614, and 63-3618.

Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.

2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.

3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, and 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.

4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of the final unified decree as it may be amended. Section 42-1412(6), Idaho Code.

5. This water right is subordinate to the following water rights:
   a. All surface water rights within IDWR Administrative Basin 63 with a priority date earlier than May 1, 2014, with a decreed or licensed diversion rate of less than 0.1 CFS;
   b. All water rights listed on attachment A.

6. The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective _XX/XX_, 2018, which is incorporated herein by reference.

7. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2)

before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.

8. Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.

9. This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

Exhibit A

Subodination Summary - Surface Water Rights - 4/22/18

Row #	WRN	Priority	Right ID	Diversion
1	63-7866	9/12/1973	557848	0.48
2	63-31290A	4/1/1974	572177	0.52
3	63-8004	7/1/1974	556833	0.20
4	63-19543	1/20/1975	554371	0.14
5	63-8199	8/29/1975	557220	0.12
6	63-8380	10/26/1976	556166	0.20
7	63-8393	12/9/1976	556140	0.20
8	63-8647	4/1/1977	555114	0.11
9	63-8960	6/16/1977	556141	0.18
10	63-9433	8/11/1980	556057	0.76
11	63-9438	9/8/1980	56983	0.11
12	63-9642	11/6/1980	577389	0.44
13	63-9688	2/17/1981	557569	0.15
14	63-9684	2/27/1981	557573	0.53
15	63-9699	3/31/1981	556171	0.40
16	63-9683	4/14/1981	557574	0.20
17	63-9942	7/16/1982	557481	0.20
18	63-9982	2/3/1983	57523	0.20
19	63-10111	7/20/1983	57650	0.30
20	63-10254	7/19/1984	57789	0.19
21	63-10279	4/6/1985	556078	0.13
22	63-10324	9/17/1985	657871	0.36
23	63-10325	9/17/1985	657870	0.36
24	63-9750	8/10/1987	556120	1.00
25	63-10560	11/18/1987	16211	0.96
26	63-10776	3/6/1989	89991	0.20
27	63-7226	3/14/1989	54740	0.17
28	63-11619	12/31/1991	59098	0.18
29	63-12567	8/13/1999	547801	0.20
30	63-32016	12/6/2004	592234	1.76
31	63-11439	2/22/1991	667738	1.00
32	63-12055	9/8/1993	36385	24.80
33	63-12399	6/6/1997	672197	3.40
34	63-12420	6/6/1997	671689	5.00
35	63-31409	11/16/2001	559840	20.00
36	63-9346	2/19/1980	638003	0.50
37	63-9944	8/11/1982	600805	1.00
38	63-32537	11/15/1986	607915	0.56
39	63-10810	6/12/1989	15042	4.10
40	63-12113	4/25/1994	613711	0.12
41	63-33905	1/30/2014	671170	0.40
				71.83

Exhibit A

Subodination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
1	63-7754	3/20/1973	55284	0.04
2	63-4284	4/15/1973	53350	0.04
3	63-7792	5/8/1973	55323	0.04
4	63-7794	5/17/1973	553394	0.04
5	63-4766	6/1/1973	53855	0.04
6	63-15335	6/15/1973	377273	0.02
7	63-15406	6/15/1973	377553	0.04
8	63-19090	6/15/1973	373130	0.04
9	63-7824	7/10/1973	55355	0.04
10	63-7822	7/12/1973	55353	0.04
11	63-7826	7/13/1973	378714	0.04
12	63-7835	7/19/1973	372954	0.04
13	63-15123	7/20/1973	378844	0.04
14	63-7807	8/3/1973	555963	0.04
15	63-4563	8/20/1973	53630	0.04
16	63-4571	8/22/1973	53638	0.04
17	63-7781	8/29/1973	557020	0.44
18	63-19423	9/4/1973	373296	0.04
19	63-7856	9/4/1973	55386	0.04
20	63-15129	10/15/1973	378848	0.04
21	63-7901	12/5/1973	55436	0.02
22	63-15069	12/31/1973	376355	0.04
23	63-15421	12/31/1973	377560	0.04
24	63-7943	3/1/1974	55477	0.04
25	63-30441	5/1/1974	145925	0.06
26	63-18966	5/10/1974	379529	0.04
27	63-15279	5/24/1974	377260	0.04
28	63-19269	6/1/1974	344556	0.04
29	63-19270	6/1/1974	344557	0.04
30	63-15431	7/1/1974	368155	0.06
31	63-19052	8/9/1974	553368	0.02
32	63-19053	8/9/1974	406969	0.02
33	63-19054	8/9/1974	406970	0.02
34	63-19614	8/15/1974	373377	0.04
35	63-24097	8/15/1974	141904	0.04
36	63-19896	1/1/1975	379678	0.04
37	63-8067	1/6/1975	660521	5.49
38	63-19484	5/14/1975	373325	0.02
39	63-19142	5/30/1975	373160	0.04
40	63-19333	5/30/1975	406386	0.04
41	63-15420	6/1/1975	377559	0.04
42	63-15303	7/1/1975	319522	0.04
43	63-29396	7/1/1975	406986	0.04

Exhibit A

Subodination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
44	63-19462	9/1/1975	373314	0.04
45	63-8204	9/7/1975	378726	0.04
46	63-30487	9/16/1975	193220	0.04
47	63-15177	9/26/1975	379891	0.04
48	63-8224	10/20/1975	55760	0.04
49	63-8237	12/4/1975	406437	0.04
50	63-30404	12/31/1975	368271	0.04
51	63-24106	3/6/1976	406312	0.04
52	63-19720	5/1/1976	379590	0.04
53	63-19159	5/24/1976	553853	0.04
54	63-19630	5/29/1976	373385	0.04
55	63-30347	6/1/1976	406329	0.04
56	63-30349	6/1/1976	406331	0.04
57	63-30352	6/1/1976	406333	0.04
58	63-8317	6/1/1976	557570	0.13
59	63-18965	6/8/1976	379528	0.04
60	63-30436	6/15/1976	391930	0.03
61	63-15109	7/1/1976	378832	0.04
62	63-15141	7/1/1976	378857	0.04
63	63-15363	7/1/1976	377539	0.04
64	63-22114	7/1/1976	370819	0.04
65	63-4667	7/1/1976	53749	0.04
66	63-15138	7/10/1976	378854	0.04
67	63-19451	8/6/1976	406300	0.04
68	63-19429	9/10/1976	373297	0.04
69	63-4559	10/30/1976	400345	0.04
70	63-15203	2/1/1977	377233	0.04
71	63-8500	2/25/1977	552831	0.04
72	63-15114	3/1/1977	378835	0.04
73	63-16361	3/2/1977	377449	0.02
74	63-8714	3/11/1977	372956	0.04
75	63-8643	4/1/1977	556062	0.22
76	63-8678	4/7/1977	56217	0.04
77	63-8691	4/20/1977	56230	0.03
78	63-15061	6/1/1977	378800	0.01
79	63-18331	6/1/1977	379453	0.04
80	63-8961	6/13/1977	372958	0.02
81	63-8957	6/15/1977	378736	0.02
82	63-15160	7/1/1977	378869	0.04
83	63-15284	7/1/1977	377261	0.04
84	63-8976	7/11/1977	557482	0.08
85	63-15413	7/15/1977	376356	0.04
86	63-30217	7/20/1977	370830	0.04

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Subodination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
87	63-15081	8/1/1977	378815	0.06
88	63-16175	8/15/1977	377373	0.06
89	63-15128	8/20/1977	376090	0.04
90	63-15189	9/1/1977	377225	0.04
91	63-15118	9/15/1977	378839	0.02
92	63-19694	9/30/1977	379578	0.09
93	63-15066	10/1/1977	378805	0.04
94	63-27142	10/1/1977	141937	0.04
95	63-32439	10/15/1977	604957	0.01
96	63-15403	10/20/1977	377551	0.04
97	63-15404	10/20/1977	377552	0.04
98	63-9061	10/24/1977	552783	0.04
99	63-26301	11/15/1977	406316	0.04
100	63-26830	11/15/1977	406320	0.04
101	63-19306	11/29/1977	406297	0.04
102	63-28349	12/31/1977	376105	0.04
103	63-28504	12/31/1977	126810	0.04
104	63-15147	2/1/1978	378862	0.04
105	63-31106	3/1/1978	568537	0.04
106	63-30216	3/30/1978	368218	0.04
107	63-15068	5/24/1978	378807	0.04
108	63-15119	5/31/1978	378840	0.04
109	63-15102	6/1/1978	396957	0.02
110	63-19229	6/1/1978	373206	0.04
111	63-25728	6/1/1978	406313	0.04
112	63-27063	6/10/1978	145365	0.08
113	63-15394	6/15/1978	376098	0.02
114	63-15314	6/22/1978	377269	0.04
115	63-19160	7/9/1978	553854	0.04
116	63-19063	7/25/1978	406971	0.04
117	63-19440	7/27/1978	373302	0.05
118	63-15096	7/31/1978	378822	0.04
119	63-16034	7/31/1978	377307	0.04
120	63-19232	8/1/1978	373209	0.04
121	63-9169	8/3/1978	378738	0.04
122	63-23396	8/7/1978	141668	0.02
123	63-30439	8/30/1978	396163	0.04
124	63-15104	9/1/1978	378828	0.04
125	63-30150	10/1/1978	368213	0.06
126	63-9189	10/18/1978	404613	0.01
127	63-15146	11/6/1978	378861	0.04
128	63-8384	11/15/1978	556068	0.18
129	63-30363	12/21/1978	368236	0.04

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Subodination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
130	63-9217	3/7/1979	552860	0.06
131	63-26644	4/15/1979	406319	0.03
132	63-9226	4/16/1979	404615	0.02
133	63-9227	4/16/1979	404616	0.02
134	63-9228	4/16/1979	404617	0.01
135	63-24108	5/3/1979	411185	0.03
136	63-9240	5/23/1979	378742	0.04
137	63-15107	5/29/1979	378830	0.04
138	63-24078	6/12/1979	141897	0.04
139	63-9256	6/22/1979	56798	0.04
140	63-20316	6/30/1979	406415	0.04
141	63-15230	7/1/1979	377243	0.04
142	63-15574	7/1/1979	396959	0.04
143	63-22161	7/1/1979	406308	0.04
144	63-15429	8/1/1979	377562	0.04
145	63-9273	8/6/1979	404618	0.01
146	63-15315	8/16/1979	377270	0.04
147	63-15060	9/14/1979	378799	0.04
148	63-15090	9/15/1979	376088	0.02
149	63-30444	9/17/1979	145443	0.04
150	63-30306	11/1/1979	370831	0.01
151	63-15217	4/1/1980	401352	0.06
152	63-24043	4/8/1980	141886	0.04
153	63-9381	5/19/1980	378746	0.04
154	63-15218	5/20/1980	396958	0.03
155	63-15210	6/1/1980	319515	0.04
156	63-15359	6/1/1980	377538	0.04
157	63-15648	6/1/1980	137945	0.04
158	63-18482	6/1/1980	379471	0.02
159	63-19194	6/1/1980	373184	0.05
160	63-15201	6/5/1980	377231	0.04
161	63-9394	6/10/1980	552824	0.08
162	63-9402	6/12/1980	556045	0.04
163	63-15245	7/1/1980	377249	0.02
164	63-19775	7/1/1980	379617	0.04
165	63-22269	7/1/1980	406975	0.04
166	63-15121	7/10/1980	378842	0.04
167	63-9425	7/29/1980	404620	0.02
168	63-15248	7/30/1980	377250	0.04
169	63-15029	8/7/1980	376085	0.04
170	63-30215	8/26/1980	370826	0.03
171	63-19433	9/24/1980	406298	0.04
172	63-15277	10/1/1980	377259	0.04

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Subodination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
173	63-15288	10/1/1980	377264	0.04
174	63-15808	10/14/1980	372971	0.04
175	63-9651	12/5/1980	553422	0.08
176	63-15619	12/31/1980	376100	0.04
177	63-31457	1/1/1981	558779	0.03
178	63-26144	1/22/1981	406980	0.04
179	63-30329	1/22/1981	406328	0.04
180	63-27340	3/25/1981	139901	0.04
181	63-15135	5/15/1981	376091	0.04
182	63-15932	5/19/1981	406293	0.08
183	63-28747	6/1/1981	368200	0.04
184	63-15228	6/4/1981	377241	0.02
185	63-15354	7/1/1981	377537	0.04
186	63-19491	7/5/1981	373328	0.06
187	63-26175	7/15/1981	406982	0.06
188	63-29959	7/31/1981	376107	0.04
189	63-19705	8/25/1981	379584	0.04
190	63-19076	9/2/1981	373128	0.04
191	63-9821	9/28/1981	378754	0.03
192	63-22836	10/1/1981	160025	0.04
193	63-9748	10/12/1981	556173	0.07
194	63-17396	11/4/1981	379050	0.04
195	63-9900	4/30/1982	552864	0.06
196	63-15287	5/20/1982	377263	0.04
197	63-15072	5/31/1982	376086	0.04
198	63-15105	6/1/1982	378829	0.04
199	63-18484	6/1/1982	376102	0.04
200	63-19477	6/1/1982	406269	0.04
201	63-9924	6/22/1982	57465	0.04
202	63-18964	7/6/1982	379527	0.04
203	63-15034	7/14/1982	406438	0.04
204	63-19268	8/20/1982	406344	0.02
205	63-32240	1/1/1983	604376	0.06
206	63-9974	1/20/1983	560226	0.04
207	63-19455	3/15/1983	373308	0.04
208	63-10011	3/29/1983	372963	0.08
209	63-10045	5/18/1983	372964	0.02
210	63-19449	5/20/1983	550845	0.04
211	63-15510	5/30/1983	376099	0.04
212	63-10068	6/9/1983	404630	0.04
213	63-10080	6/9/1983	404631	0.01
214	63-10135	6/9/1983	404632	0.02
215	63-10148	6/9/1983	404633	0.01

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Subodination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
216	63-25957	6/13/1983	368190	0.04
217	63-10089	6/15/1983	57629	0.08
218	63-10083	6/21/1983	553418	0.05
219	63-10087	6/21/1983	556089	0.04
220	63-10082	6/22/1983	57622	0.04
221	63-10192A	6/22/1983	378767	0.04
222	63-10192B	6/22/1983	557578	0.02
223	63-10092	6/23/1983	378763	0.04
224	63-15468	6/25/1983	377566	0.04
225	63-33445	6/28/1983	637243	0.12
226	63-33446	6/28/1983	637244	0.08
227	63-15095	7/1/1983	378821	0.07
228	63-28936	7/21/1983	368202	0.02
229	63-30445	10/10/1983	373846	0.02
230	63-30272	1/1/1984	368234	0.04
231	63-26374	4/30/1984	406318	0.04
232	63-15145	5/17/1984	378860	0.01
233	63-15286	6/1/1984	377262	0.04
234	63-15113	7/1/1984	378834	0.04
235	63-15298	7/1/1984	319128	0.04
236	63-19029	7/1/1984	406295	0.03
237	63-15140	8/5/1984	378856	0.04
238	63-15202	8/20/1984	377232	0.04
239	63-19191	10/2/1984	406296	0.04
240	63-19834	10/23/1984	379644	0.04
241	63-30255	1/1/1985	368232	0.04
242	63-15142	4/30/1985	378858	0.04
243	63-19458	6/1/1985	373310	0.04
244	63-18967	6/15/1985	379530	0.04
245	63-30470	6/30/1985	556467	0.04
246	63-19617	8/1/1985	373378	0.04
247	63-10318	8/9/1985	547746	0.45
248	63-19257	9/1/1985	411084	0.04
249	63-19271	9/15/1985	373226	0.04
250	63-15036	9/23/1985	372968	0.02
251	63-31531	9/25/1985	561550	0.02
252	63-15263	10/16/1985	377257	0.04
253	63-10332	10/25/1985	404634	0.02
254	63-15033	1/1/1986	372967	0.02
255	63-29748	3/31/1986	376106	0.04
256	63-15149	5/5/1986	378864	0.04
257	63-30391	5/10/1986	406988	0.08
258	63-15179	5/31/1986	377222	0.04

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Subodination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
259	63-15790	6/1/1986	376848	0.04
260	63-19741	6/16/1986	379604	0.02
261	63-18858	6/27/1986	379512	0.04
262	63-18969	8/6/1986	144413	0.04
263	63-30442	8/6/1986	396219	0.04
264	63-15633	11/1/1986	380085	0.02
265	63-10457	3/24/1987	552894	0.18
266	63-30440	5/11/1987	145921	0.04
267	63-15007	6/1/1987	372965	0.02
268	63-19732	6/1/1987	406305	0.04
269	63-10506	6/16/1987	557478	0.04
270	63-26364	6/19/1987	406317	0.04
271	63-15064	7/1/1987	378803	0.03
272	63-19653	8/17/1987	379553	0.07
273	63-27344	8/19/1987	344373	0.04
274	63-10529	8/24/1987	58066	0.04
275	63-15378	9/10/1987	319558	0.09
276	63-31228	9/10/1987	570110	0.13
277	63-17402	11/12/1987	378589	0.04
278	63-15152	11/17/1987	319378	0.04
279	63-10559	11/18/1987	58094	0.06
280	63-31474	5/31/1988	559221	0.02
281	63-10641	6/17/1988	411503	0.01
282	63-15222	8/1/1988	319114	0.03
283	63-16033	10/7/1988	376101	0.04
284	63-27069	10/8/1988	376103	0.04
285	63-30332	12/1/1988	376109	0.04
286	63-10771	2/23/1989	58289	0.11
287	63-19708	4/1/1989	406303	0.04
288	63-19709	4/1/1989	406304	0.04
289	63-10787	5/1/1989	58305	0.04
290	63-10796	5/12/1989	556013	0.07
291	63-10800	5/19/1989	58317	0.04
292	63-10797	5/23/1989	101360	0.08
293	63-26300	6/26/1989	406983	0.03
294	63-19728	9/1/1989	379598	0.04
295	63-11013	9/27/1989	555411	0.03
296	63-9171	10/6/1989	56709	0.22
297	63-11070	10/16/1989	550744	0.13
298	63-11078	11/14/1989	98741	0.06
299	63-11083	11/24/1989	58572	0.04
300	63-11079	11/29/1989	58569	0.04
301	63-11080	11/29/1989	58570	0.02

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Subodination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
302	63-11061	12/5/1989	101743	0.04
303	63-11513	3/14/1991	594903	9.68
304	63-11514	5/10/1991	594912	9.68
305	63-30359	7/26/1991	406487	0.07
306	63-29419	8/19/1991	406321	0.06
307	63-11596	10/9/1991	17450	0.04
308	63-11637	2/5/1992	7803	0.05
309	63-10802	4/21/1992	103333	0.38
310	63-31468	6/11/1992	559146	0.02
311	63-30341	6/29/1992	406483	0.07
312	63-11936	9/21/1992	97295	0.04
313	63-11957	9/29/1992	102074	0.02
314	63-11943	10/15/1992	4346	0.15
315	63-11958	10/16/1992	102077	0.04
316	63-29443	6/1/1993	368203	0.04
317	63-12041	7/31/1993	671226	0.09
318	63-30086	8/14/1993	368210	0.04
319	63-12059	9/28/1993	103377	0.12
320	63-30371	6/23/1994	376110	0.01
321	63-12128	7/27/1994	103145	0.04
322	63-12146	9/20/1994	611488	0.04
323	63-12153	11/10/1994	620453	0.40
324	63-32239	11/14/1994	604375	0.06
325	63-30190	12/5/1994	370823	0.06
326	63-30365	6/3/1995	368237	0.04
327	63-30364	9/7/1995	369762	0.04
328	63-12317	2/6/1996	663368	0.10
329	63-30369	3/14/1996	368239	0.04
330	63-31285	4/8/1996	557504	0.04
331	63-30370	4/10/1996	369763	0.04
332	63-12350	8/1/1996	103326	0.04
333	63-33044	9/15/1996	621257	0.04
334	63-30421	10/13/1996	406337	0.04
335	63-12537	7/7/1999	630730	0.14
336	63-12558	12/9/1999	551761	0.03
337	63-12608	11/27/2000	658112	0.11
338	63-31218	3/23/2001	556578	0.14
339	63-31311	8/27/2001	559183	0.04
340	63-31503	5/28/2002	657845	0.04
341	63-12507	8/2/2004	110175	0.08
342	63-32180	3/3/2005	596264	0.15
343	63-32393	3/2/2006	627706	0.04
344	63-32945	11/27/2007	630788	0.12

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Subodination Summary - Ground Water Rights - 4/21/18

Row #	WRN	Priority	Right ID	Diversion
345	63-33933	9/25/2008	671262	0.02
346	63-33321	12/21/2009	649729	0.06
347	63-33379	5/17/2010	639436	0.04
348	63-33532	6/13/2011	651391	0.09
349	63-33677	7/30/2012	669655	0.04
350	63-33800	6/26/2013	671975	0.04
351	63-33888	1/3/2014	671931	0.67
				42.65

ATTACHMENT E

STIPULATION ATTACHMENT E – MOTION TO RESET ORAL ARGUMENT

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF ACCOUNTING FOR DISTRIBUTION OF WATER TO THE FEDERAL ON-STREAM RESERVOIRS IN WATER DISTRICT 63 BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES.	Supreme Court Docket No. 44746-2017 *(separate motion necessary for each appeal)* **JOINT MOTION TO SUSPEND APPEAL AND RESET ORAL ARGUMENT**
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; PIONEER IRRIGATION DISTRICT; SETTLERS IRRIGATION DISTRICT;	

STIPULATION ATTACHMENT E – MOTION TO RESET ORAL ARGUMENT

SOUTH BOISE WATER COMPANY; and THURMAN MILL DITCH COMPANY,

Respondents,

vs.

BOISE PROJECT BOARD OF CONTROL, and NEW YORK IRRIGATION DISTRICT,

Respondents,

vs.

THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN, in his capacity as the Director of the Idaho Department of Water Resources,

Appellants,

and

SUEZ WATER IDAHO, INC.,

Respondent.

The parties to the above-captioned appeal hereby jointly move this Court, pursuant to Rule 13.2 of the Idaho Appellate Rules, to suspend this appeal and reset oral argument to the first setting available after November 30, 2019. As discussed below, there is good cause for granting this relief because the parties have agreed to a settlement that if implemented in accordance with the terms of the parties' settlement stipulation would render this appeal moot, and the parties would jointly move for dismissal of this appeal. Otherwise the appeal would proceed to oral argument on the first date available after November 30, 2019.

Statement in Support of Motion to Suspend Appeal

STIPULATION ATTACHMENT E – MOTION TO RESET ORAL ARGUMENT

The parties to the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 have entered into a stipulation for the purpose of facilitating and expediting resolution of disputes that have arisen in various judicial and administrative proceedings pertaining to issues of the "fill" and/or "refill" of the storage water rights for the on-stream reservoirs in IDWR Administrative Basin 63 (Boise River Basin), including but not limited to: the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; the administrative and judicial proceedings underlying these same appeals and cross-appeals; and Snake River Basin Adjudication ("SRBA") subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

The parties have agreed to seek issuance in the SRBA of partial decrees and orders to implement the proposed settlement, and the form of one of the proposed partial decrees to be submitted to the SRBA Court depends on whether certain legislation is enacted during the 2019 Regular Legislative Session. If the SRBA district court issues partial decrees materially consistent with the proposed partial decrees the parties have agreed to submit to the SRBA district court, the parties have agreed to jointly move this Court for dismissal of the appeals and cross-appeals with instructions to the District Court to vacate the orders that are the subject of the appeals and cross-appeals. If the SRBA district court does not issue partial decrees materially consistent with the partial decrees to be submitted to the SRBA district court, the parties have agreed the appeals and cross-appeals will proceed to oral argument on the first date available after November 30, 2019.

The settlement contemplated by the parties' stipulation thus depends in part on whether

on whether certain legislation is enacted during the 2019 Regular Legislative Session. The parties therefore request that the appeals and cross-appeals be suspended and oral argument rescheduled for the first available setting after November 2019. If the settlement is successfully implemented in accordance with the terms of the parties' stipulation, the appeals and cross-appeals would be rendered moot and the parties would jointly move for dismissal of the appeals and cross-appeals. If the settlement is not successfully implemented in accordance with the terms of the stipulation, the appeals and cross-appeals would proceed to oral argument on the first available date after November 30, 2019.

For these reasons, the parties respectfully submit there is good cause to grant this motion, and respectfully request that this Court suspend this appeal and reschedule oral argument for the first setting available after November 30, 2019.

Respectfully submitted this _____ day of June, 2018.

[SIGNATURE BLOCK AND CERTIFICATE OF SERVICE]

ATTACHMENT F

STIPULATION ATTACHMENT F –
MOTION TO ALTER OR AMEND EXISTING PARTIAL DECREES

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	**MOTION TO ALTER OR AMEND PARTIAL DECREES FOR WATER RIGHT NOS. 63-303, 63-3613, 63-3614, and 63-3618**
Case No. 39576	)	

MOTION

The State of Idaho ("State"), by and through its attorneys of record, pursuant to Administrative Order 1 and Rule 60(b)(6) of the Idaho Rules of Civil Procedure, and the "Stipulation" appended hereto as **Exhibit 1**, hereby moves this Court to alter or amend the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618 for the limited purpose of including two "remarks" that are necessary for efficient administration of the

water rights under a proposed settlement of ongoing disputes over the "fill" and/or "refill" of the storage water rights for on-stream reservoirs in Administrative Basin 63. Specifically, this motion requests that two remarks be added to the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618, as follows:

a. In the "Quantity" element, the following combined volume limit remark: "Water rights nos. 63-303, 63-3613, 63-3614, 63-3618, 63-33734A, and 63-33734B, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water";

b. In the "Other Provisions" element, the following remark addressing "reset": "The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided, however, the annual time period will begin (1) after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier."

DISCUSSION

Rule 60(b)(6) of the Idaho Rules of Civil Procedure authorizes this Court to alter or amend a partial decree for "any other reason that justifies relief." I.R.C.P. 60(b)(6). This provision is applicable to this motion because addition of the above-described remarks to the partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 63-3618 is a

limited amendment and necessary for efficient administration of the water rights under the proposed settlement of the ongoing disputes over the "fill" and/or "refill" of the storage water rights for on-stream reservoirs in Administrative Basin 63.

As this Court is aware, disputes over the "fill" and/or "refill" of the storage water rights for on-stream reservoirs in Administrative Basin 63 arose in SRBA subcase no. 00-91017 and remain at issue in SRBA subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. Disputes over the "fill" and/or "refill" of the storage water rights for on-stream reservoirs in Administrative Basin 63 also arose in the administrative and judicial review proceedings that were the subject of Twin Falls County Case No. CV-WA-2015-21376 (Consolidated Ada County Case No. CV-WA-2015-21391). The same disputes have arisen in the subsequent appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017. *See* **Exhibit 1**.

These disputes present difficult and often contentious questions. The parties to the above-referenced SRBA proceedings and Idaho Supreme Court appeals and cross-appeals have been attempting for years to resolve these difficult matters through negotiations. In 2018 the parties entered into a Stipulation for the purpose of facilitating and expediting resolution of the above-referenced disputes pertaining to issues of the "fill" and/or "refill" of the storage water rights for the on-stream reservoirs in the Boise River Basin. *See* **Exhibit 1**.

Under the Stipulation, the parties agreed to seek issuance in the SRBA of partial decrees for water right nos. 63-33734A and water right no. 63-33734B of the forms

proposed by the concurrently filed motions to decree those water rights.[1] The parties also agreed to seek orders decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738. The parties also agreed to seek orders adding the above-described remarks to the existing partial decrees for water right nos. 63-303, 63-3613, 63-3614, and 3618.

This motion is one of the motions required by the Stipulation. Full and final resolution of SRBA subcase nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738 requires issuance of partial decrees of the form proposed in the concurrently-filed motions to decree water right nos. 63-33734A and 63-33734B. The proposed forms of the partial decrees for water right nos. 63-33734A and 63-33734B include remarks in the "Purpose and Period of Use" element stating that "[w]ater accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618." The proposed partial decrees also include the combined volume limit and "reset" remarks set forth above. *See* **Exhibit 1**.

In light of these remarks in the proposed partial decrees, it is necessary for the efficient administration of water rights nos. 63-303, 63-3613, 63-3614, and 63-3618 that their partial decrees be amended for the limited purpose of including the same combined volume limit and "reset" remarks set forth in the proposed partial decrees for water right nos. 63-33734A and 63-33734B. If the proposed partial decrees for water right nos. 63-

[1] Pursuant to the Stipulation, the State is also filing on this date: (1) a motion for an order issuing a partial decree for water right no. 63-33734A; and (2) a motion for an order issuing a partial decree for water right no. 63-33734B and decreeing as disallowed water right claim nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

33734A and 63-33734B are issued, but the existing partial decrees are not amended to include the same the same combined volume limit and "reset" remarks, there is a risk of future ambiguity, confusion, and dispute regarding the relationship between the two groups of water rights and how they are to be administered.

This would be contrary to the objective of promoting the efficient administration of water and water rights. Idaho Code §§ 42-111(2)(j), 42-1412(6). It would also defeat the purpose of the Stipulation to fully and finally resolve long-running disputes over the "fill" and/or "refill" of the storage water rights for on-stream reservoirs in Administrative Basin 63. Given these considerations, and the fact that all the other SRBA disputes over the "fill" and/or "refill" of the storage water rights for on-stream reservoirs have been resolved, the limited relief requested by this motion is authorized under Rule 60(b)(6).

CONCLUSION

For the reasons discussed herein, in the Stipulation appended hereto, and in the concurrently-filed motions to decree water right nos. water right nos. 63-33734A and 63-33734B, the State respectfully requests that this Court issue orders amending the partial decrees for water right nos. nos. 63-303, 63-3613, 63-3614, and 63-3618 for the limited purpose of including the combined volume limit and "reset" remarks set forth above.

This motion is related to the concurrently-filed motions to decree water right nos. water right nos. 63-33734A and 63-33734B, and should be noticed and considered in conjunction with those motions. The State therefore requests expeditious consideration of this motion, so that it can be noticed, any potential objections resolved, no later than November 30, 2019.

STIPULATION ATTACHMENT F –
MOTION TO ALTER OR AMEND EXISTING PARTIAL DECREES

[SIGNATURE BLOCK & CERTIFICATE OF SERVICE]

ATTACHMENT G

STIPULATION ATTACHMENT G – MOTION TO DISMISS APPEALS

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF ACCOUNTING FOR DISTRIBUTION OF WATER TO THE FEDERAL ON-STREAM RESERVOIRS IN WATER DISTRICT 63 BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES.	Supreme Court Docket No. 44746-2017 *(separate motion necessary for each appeal)* **JOINT MOTION TO DISMISS APPEAL**
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; PIONEER IRRIGATION DISTRICT; SETTLERS IRRIGATION DISTRICT;	

SOUTH BOISE WATER COMPANY; and THURMAN MILL DITCH COMPANY,

Respondents,

vs.

BOISE PROJECT BOARD OF CONTROL, and NEW YORK IRRIGATION DISTRICT,

Respondents,

vs.

THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN, in his capacity as the Director of the Idaho Department of Water Resources,

Appellants,

and

SUEZ WATER IDAHO, INC.,

Respondent.

The parties to the above-captioned appeal hereby jointly move this Court, pursuant to Rule 32(b) and Rule 33 of the Idaho Appellate Rules, to dismiss this appeal with prejudice, with all parties to bear their own costs and fees, and with instructions to the District Court to vacate its *Memorandum Decision and Order* (Sep. 1, 2016) and *Order Denying Rehearing* (Nov. 14, 2016) entered in the case underlying this appeal, Twin County Case No. CV-WA-2015-21376 (Consolidated Ada County Case No. CV-WA-2015-21391). As discussed below, the parties' stipulated settlement of their disputes over the "fill" and/or "refill" of the storage water rights for on-stream reservoirs in Administrative Basin 63 requires, among other things, dismissal of this

appeal and the related appeals and cross-appeals, and vacatur of the District Court's orders. The parties' "Stipulation" and its "Attachments" are appended hereto as **Exhibit 1.**

As discussed in the parties' June 2018 motion to suspend this appeal and reschedule oral argument for the first available date after November 30, 2019, the parties to the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 entered into a Stipulation for the purpose of facilitating and expediting resolution of disputes that have arisen in various judicial and administrative proceedings pertaining to issues of the "fill" and/or "refill" of the storage water rights for the on-stream reservoirs in IDWR Administrative Basin 63 (Boise River Basin).[1] *See* **Exhibit 1.**

The parties agreed to seek issuance in the SRBA of partial decrees and orders to implement the proposed settlement, and to seek dismissal of these appeals and cross-appeals with instructions to the District Court to vacate the orders that are the subject of the appeals and cross-appeals if the proposed partial decrees and orders were issued. The SRBA district court has issued the partial decrees and order proposed by the Stipulation.

The parties to this appeal therefore jointly move this Court to dismiss this appeal with prejudice, with each party to bear its own costs and fees, and with instructions to the District Court to vacate to vacate its *Memorandum Decision and Order* (Sep. 1, 2016) and *Order Denying Rehearing* (Nov. 14, 2016,) entered in the case underlying this appeal, Twin County Case No.

[1] Including but not limited to the disputes arising in the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; the administrative and judicial proceedings underlying these same appeals and cross-appeals; and Snake River Basin Adjudication ("SRBA") subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

STIPULATION ATTACHMENT G – MOTION TO DISMISS APPEALS

CV-WA-2015-21376 (Consolidated Ada County Case No. CV-WA-2015-21391).

[SIGNATURE BLOCK AND CERTIFICATE OF SERVICE]

Exhibit 1

(Copy of "Stipulation" and Attachments)