

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

| | | |
|---|---|-------------------------------|
| BALLENTYNE DITCH COMPANY; BOISE |) | Case No. CV-WA-2015-21376 |
| VALLEY IRRIGATION DITCH COMPANY; |) | (Consolidated Ada County Case |
| CANYON COUNTY WATER COMPANY; |) | No. CV-WA-2015-21391) |
| EUREKA WATER COMPANY; FARMERS' |) | |
| CO-OPERATIVE DITCH COMPANY; |) | ORDER VACATING ORDERS |
| MIDDLETON MILL DITCH COMPANY; |) | AND REMANDING TO THE |
| MIDDLETON IRRIGATION ASSOCIATION, |) | IDAHO DEPARTMENT OF |
| INC.; NAMPA & MERIDIAN IRRIGATION |) | WATER RESOURCES |
| DISTRICT; NEW DRY CREEK DITCH |) | |
| COMPANY; PIONEER DITCH COMPANY; |) | |
| PIONEER IRRIGATION DISTRICT; |) | |
| SETTLERS IRRIGATION DISTRICT; SOUTH |) | |
| BOISE WATER COMPANY; and THURMAN |) | |
| MILL DITCH COMPANY, |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| vs. |) | |
| |) | |
| BOISE PROJECT BOARD OF CONTROL, and |) | |
| NEW YORK IRRIGATION DISTRICT, |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| vs. |) | |
| |) | |
| THE IDAHO DEPARTMENT OF WATER |) | |
| RESOURCES and GARY SPACKMAN in his |) | |
| capacity as Director of the Idaho Department of |) | |
| Water Resources, |) | |
| |) | |
| Respondents, |) | |
| |) | |
| and |) | |

SUEZ WATER IDAHO INC.,

Intervenor.

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

On October 20, 2015, the Director of the Idaho Department of Water Resources issued an *Amended Final Order* concerning his method of distributing water to federal on-stream reservoirs located in the Boise River System. Several parties sought judicial review of the *Amended Final Order*. On September 1, 2016, the Court entered its *Memorandum Decision and Order* affirming in part and setting aside and remanded in part the *Amended Final Order*. On November 14, 2016, the Court entered an *Order Denying Rehearing*. *Notices of Appeal* were subsequently filed by several parties. The appeals are currently pending under Idaho Supreme Court docket numbers 44677-2016, 44745-2017, and 44746-2017.

In 2018, the parties entered into a stipulated settlement. The purpose of the settlement is to:

[F]acilitate and expedite resolution of all disputes among the Parties that have arisen in various judicial and administrative proceedings pertaining to the issues of the “fill” and/or “refill” of the storage water rights for on-stream reservoirs in Idaho Department of Water Resources . . . Administrative Basin 63, known as Arrowrock, Anderson Ranch and Lucky Peak 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.

Stipulation, p.1.¹

The settlement anticipates the parties thereto supporting certain legislative and judicial actions. In the legislative arena, the parties agreed to jointly support passage of

¹ A copy of the *Stipulation* is attached as Exhibit 1 to the State of Idaho’s *Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and 63-3618*.

legislation pertaining to new or proposed projects to store more than one thousand acre feet of surface water. That legislation, which is now codified as Idaho Code § 42-115, was passed and made effective as of February 13, 2019.

In the judicial arena, the parties agreed to jointly support the filing of the following *Motions* with the SRBA District Court: (1) *Motion to Decree Water Right No. 63-33734A*; (2) *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*; and (3) *Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and 63-3618*. The State of Idaho filed the *Motions* on February 19, 2019. The Court entered *Orders* granting the *Motions* on July 19, 2019. No notices of appeal from these *Orders* were filed and the time for doing so has expired.

The parties also agreed to file a *Joint Motion to Dismiss Appeal* in Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017. The *Joint Motions* were filed on July 29, 2019, and request that the Idaho Supreme Court dismiss the appeals with instructions to the district court to vacate its *Memorandum Decision and Order* and *Order Denying Rehearing*. On August 23, 2019, the Idaho Supreme Court entered its *Order Re: Joint Motion to Dismiss Appeal*. The Court informed the parties that there is no rule allowing it to vacate a judgment of a trial court pursuant to stipulation of the parties. It ordered that the matter be remanded to this Court “for further proceedings in accordance with applicable legislation and stipulation of the parties.”


On September 17, 2019, the Court gave notice that it was its intent pursuant to stipulation of the parties to (1) enter an *Order* vacating its *Memorandum Decision and Order* dated September 1, 2016, and its *Order Denying Rehearing* dated November 14, 2016, and (2) remand this matter to the Idaho Department of Water Resources for further proceedings, if any, as may be necessary. Any party wishing to object to the Court’s intended action was required to file a written objection with the Court on or before October 15, 2019. No written objections were filed and the time for doing so has expired.

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE
HEREBY ORDERED:

1. The Court's *Memorandum Decision and Order* dated September 1, 2016, and its *Order Denying Rehearing* dated November 14, 2016, are hereby vacated.
2. The matter is remanded to the Idaho Department of Water Resources for further proceedings, if any, as may be necessary.

IT IS SO ORDERED.

Dated October 16, 2019


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER VACATING ORDERS AND REMANDING TO THE IDAHO DEPARTMENT OF WATER RESOURCES was mailed on October 16, 2019, with sufficient first-class postage to the following:

ANDREW J WALDERA
SAWTOOTH LAW OFFICES PLLC
1101 W RIVER ST STE 110
PO BOX 7985
BOISE, ID 83707
Phone: 208-629-7447

DANIEL V STEENSON
SAWTOOTH LAW OFFICES PLLC
1101 W RIVER ST STE 110
PO BOX 7985
BOISE, ID 83707
Phone: 208-629-7447

GARRICK L BAXTER
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO - IDWR
PO BOX 83720
BOISE, ID 83720-0098
Phone: 208-287-4800

MICHAEL P LAWRENCE
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

S. BRYCE FARRIS
SAWTOOTH LAW OFFICES PLLC
1101 W RIVER ST STE 110
PO BOX 7985
BOISE, ID 83707
Phone: 208-629-7447

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".