



John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
BARKER ROSHOLT & SIMPSON LLP
163 Second Avenue West
P.O. Box 63
Twin Falls, Idaho 83303-0063
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company*

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548

*Attorneys for American Falls
Reservoir District #2 and Minidoka
Irrigation District*

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

IN THE MATTER OF THE PETITION
FILED BY ABERDEEN-SPRINGFIELD
CANAL COMPANY REGARDING
DISTRIBUTION OF NATURAL FLOW BY
WATER DISTRICT 01

Docket No. P-WRA-2017-001

**STIPULATION AND JOINT MOTION
FOR ORDER APPROVING
STIPULATION**

COME NOW, Petitioner Aberdeen-Springfield Canal Company and Intervenors A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, Twin Falls Canal Company, Idaho Power Company, Fremont Madison Irrigation District, Idaho Irrigation District, Parson's Ditch Co., New Sweden Irrigation District, Wearywick Ditch Company, United Canal Company, Peoples Canal & Irrigation Company, Egin Bench Canals, Inc., the Shoshone-Bannock Tribes, and the United States Department of Interior, Bureau of Indian Affairs, by and through their undersigned counsel of record, and pursuant to the Department's Rules of Procedure 557 and 612 (IDAPA 37.01.01), hereby stipulate and jointly move the Department for

an order approving the same and including the procedures in Water District 01 water right administration and accounting beginning in the 2018 irrigation season.

PROCEDURAL BACKGROUND

On January 18, 2017, Aberdeen-Springfield Canal Company (“ASCC”) submitted a letter to Lyle Swank, Water District 01 Watermaster, questioning certain accounting practices that had been identified in the recent Accounting Model review process. The letter sought review of “the computation of natural flow for the Shelley to At Blackfoot reach that is diminished by loss in the At Blackfoot to Near Blackfoot reach.” On March 6, 2017, the Director issued the *Order*, setting deadlines and establishing a hearing on the matter. The *Order* set a deadline of March 21, 2017 for any petition to intervene. The Director later extended that deadline to March 28, 2017 and reset the hearing date to September 13, 2017.

The above-referenced intervenors all filed timely petitions to intervene which were granted by the Director. The parties then held various informal settlement conferences between April and August 2017 and agreed upon a procedure to address the administration and accounting process identified in ASCC’s petition as set forth below.

FACTUAL BACKGROUND

In brief, the administration of natural flow and storage water rights in Water District 01 has changed over time. Before the construction of Palisades Reservoir, storage delivered downstream from Jackson Lake Reservoir was charged a “loss” between the reservoir and various spaceholder headgates on the Snake River. Further, varying evaporation losses were charged to the various reservoirs throughout the basin. With the construction of Palisades Reservoir, most spaceholders entered into new contracts with the U.S. Bureau of Reclamation and participated in a supplemental adjudication known generally as the *Eagle Decrees*. The

Eagle Decrees set out various provisions of administration, including the premise of maximizing storage in the Upper Snake River Basin reservoirs, whereby water from one reservoir may be stored upstream in another (i.e. American Falls Reservoir storage water is actually held in Palisades Reservoir). The new contracts and *Eagle Decrees* ushered in a new system of administration and storage operations that would accommodate the new reservoir without injuring existing water rights and rights of the spaceholders. In 1978, with the establishment of the computerized accounting program, the Snake River at Blackfoot gaging station, and the Snake River Below Blackfoot calculated gage, Water District 01 implemented a program in which calculated losses in the Below Blackfoot to Near Blackfoot (“BBtNB”) reach of the river reduced the water available for allocation to upstream natural flow water rights during the irrigation season at times when only storage water is being conveyed through the BBtNB reach. The 1978 program did not assess any losses for storage deliveries as agreed to by the spaceholders at the time.

This stipulation attempts to reach an equitable solution for the situation that arises in the BBtNB reach in certain years in light of the background described above, while preserving the ability to maximize storage and not charge storage losses in the other reaches of the Snake River.

STIPULATION

The parties hereby stipulate to the following:

1. Administration and Water Rights Accounting procedure to address actual river losses in the Below Blackfoot to Near Blackfoot (“BBtNB”) reach of the Snake River in Water District 01:

- a. The described method of distributing losses is only applicable during those times when the river is “disconnected,” meaning there is zero remaining natural flow in the BBtNB reach.
- b. When there is zero remaining natural flow in the BBtNB reach, the Water District 01 Watermaster will deduct fifty percent (50%) of the BBtNB reach losses from all spaceholder storage allocations in the district, similar to the current accounting treatment of reservoir evaporation losses, and the remaining fifty percent (50%) of the BBtNB reach losses will be deducted from natural flow water supplies, evenly split between reaches downstream of the BBtNB reach and reaches upstream of the BBtNB reach (i.e. twenty-five percent (25%) attributed to upstream reaches, twenty-five percent (25%) to downstream reaches).
- c. To apply this approach to future administration and accounting requires an estimate on the Day of Allocation¹ of the anticipated reach losses for all days in which there is 0 cfs of remaining natural flow within the BBtNB reach. Fifty percent (50%) of reach losses from the BBtNB reach would be distributed and deducted from all spaceholder storage allocations in a manner similar to the current distribution and deduction of reservoir evaporation losses from individual storage allocations. Currently, evaporation losses are estimated on the Day of Allocation. At the end of the season the estimated evaporative loss value is replaced with the actual loss value as determined by the water right accounting program. The total calculated evaporative losses are deducted from individual spaceholder storage allocations on a prorated basis, based on the percent of an individual spaceholder storage allocation to the

¹ The day during the year when the Upper Snake River Basin individual spaceholder storage allocations are determined based upon water storage content.

entire storage allocation. Due to the inability to exactly forecast BBtNB reach losses on the Day of Allocation, there will be, by necessity, discrepancies between estimated reach losses and the losses as determined at the end of the irrigation season.

Individual spaceholder storage allocations may change up or down slightly, at the end of the season, based on differences between Day of Allocation estimated reach loss values and actual end of season calculated values. These changes would be similar to current end of season storage allocation changes that occur as a result of discrepancies between the day of allocation estimation and end of season determination of evaporative losses.

- d. Deduction of the losses in the BBtNR reach from natural flow supplies will occur on a daily basis as follows: twenty five percent (25%) of the losses will be deducted from the natural flow supply in reaches above the BBtNB reach and twenty five percent (25%) of the losses will be deducted from the natural flow supply in reaches below the BBtNB reach. Deduction of BBtNB reach losses in the proposed manner will necessitate a change to the Water District 01 computerized water rights accounting program. Such changes shall be documented and included in the revised water rights accounting program manual.

2. Approval of Stipulation and Issuance of Final Order by IDWR. The parties agree to support the Joint Motion for Order Approving Stipulation set forth below. If for any reason IDWR does not approve the Stipulation and issue a final order pursuant to the terms of this Stipulation, this Stipulation is null and void and shall have no effect, and the Parties shall proceed with a determination of ASCC's petition under applicable law.

3. Stipulation Not to Be Used Against the Parties. The parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing in this Stipulation, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to show the validity or invalidity of any water right claims made by the Parties, or as an admission or concession of wrongdoing or liability, or shall be used in any manner by any party in any future administrative or judicial proceedings, other than those seeking approval of this Stipulation by IDWR, for interpretation or enforcement of this Stipulation, or for a purpose contemplated by Idaho Rule of Evidence 408.
4. Reservations. The parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending administrative litigation, by compromise and settlement and that nothing herein shall be construed as precedent in any other proceeding or context.
5. Voluntary Execution. This Stipulation was entered into and executed voluntarily by the parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence.
6. Binding Effect. This Stipulation shall be binding on any and all successors, assigns, heirs, executors, and administrators of each of the parties.
7. Effective Date. This Stipulation shall become effective upon execution by all of the parties.

JOINT MOTION FOR ORDER APPROVING STIPULATION

The parties herby jointly move IDWR to approve the foregoing Stipulation and issue a final order incorporating the same into Water District 01 water right administration and accounting procedures. The parties further request that this procedure be implemented starting in the 2018 irrigation season. The parties intend to present the joint motion, including any evidence required by IDWR to approve the same, at the hearing scheduled for September 13, 2017.

DATED this 13th day of September, 2017.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Travis L. Thompson

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Milner Irrigation
District, North Side Canal Company, and
Twin Falls Canal Company*

FLETCHER LAW OFFICE



W. Kent Fletcher

*Attorneys for Minidoka Irrigation
District and American Falls
Reservoir District #2*

DATED this 13th day of September, 2017.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson

Attorneys for Idaho Power Company

DATED this th 13 day of September, 2017.

^{NYS} RACINE OLSON BUDGE ~~NYE & BAILEY~~, CHTD.

Randall C. Budge
Randall C. Budge

Attorneys for Aberdeen-Springfield Canal Company

DATED this 13th day of September, 2017.

RIGBY ANDRUS & RIGBY, ~~CHTD~~ LAW, PLLC



Jerry R. Rigby

*Attorneys for Fremont Madison Irrigation District,
Idaho Irrigation District, Parson's Ditch Co.,
New Sweden Irrigation District, Wearywick Ditch Company,
United Canal Company, Peoples Canal & Irrigation Company,
and Egin Bench Canals, Inc.*

DATED this 13th day of Sept., 2017.


~~William Bacon~~ Monte Gray
Attorneys for Shoshone-Bannock Tribes

DATED this 11 day of September, 2017.

Duane Mecham

Duane Mecham

Attorneys for U.S. Dept. of Interior, Bureau of Indian Affairs