The U.S. Bureau of Indian Affairs ("BIA"), pursuant to the Director’s ORDER in this matter dated November 20, 2017, submits this Response to Statements of Issues.

Response to Statements of Issues

The parties who filed substantive Statements of Issues in this matter identified a number of similar issues bearing on the Director’s authority and the administration of storage and natural flow water rights in Water District 01 which are raised by the petition filed by Milner Irrigation District (Milner) that gave rise to this contested case. BIA concurs that these issues should be addressed by the Director.

In addition, the Statement of Issues filed by the Palisades Water Users, Inc. and The City of Idaho Falls raises the issue: “What is the legal effect of the spaceholder contracts with the Bureau of Reclamation which define “storage season” as “the time period from October 1 to the
date when no more water is available for storage in a particular reservoir”? This issue mirrors the issues discussed by the Shoshone-Bannock Tribes at page 12 of their Statement of Issues with respect to the storage contract (“Michaud Contract”) between BIA and the Bureau of Reclamation that “was attached to, specifically incorporated within, and repeatedly referenced in the Tribes’ Partial Final Consent Decree in the SRBA....” The Michaud Contract also has a “storage season” time period commencing on October 1. Both parties have identified that consideration of this storage contract provision (in most if not all spaceholder contracts) is relevant to this proceeding.

Finally, BIA notes that in the 1990 Fort Hall Indian Water Rights Agreement between the Tribes, the State of Idaho and others, the State of Idaho agreed that the Tribes could establish a “Shoshone-Bannock Water Bank,” at Article 7.3.4. This water bank entitles the Tribes to market water that accrues to the storage identified in the Michaud Contract. The Tribes have explained that some proposals for establishing a new reset date would negatively impact the terms of the Fort Hall Agreement and Partial Final Consent Decree. It is important to highlight that, in Article 7.3.6 of the Fort Hall Agreement, the State committed to the following:

The State agrees not to take any action that will interfere with the nature, scope, spirit and purposes of the Shoshone-Bannock Water Bank.

The Tribes have raised important concerns that the positions taken in the petition submitted by Milner would adversely impact the Tribes’ water bank and be contrary to the terms and intent of the 1990 Fort Hall agreement and the Tribes’ Partial Final Consent Decree. Thus, given that the Director is an officer of the State, it is important that these issues be considered in this proceeding and in light of the commitments made by the State in the 1990 Agreement.
DATED this 15th Day of December, 2017.

U.S. Department of the Interior
Office of the Regional Solicitor

[Signature]
Attorney for the U.S. Bureau of Indian Affairs
CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2017, I served a true and correct copy of the foregoing "Bureau of Indian Affairs Response to Statements of Issues" on the following by electronic mail:

Director, Gary Spackman
c/o Kimi White
Idaho Department of Water Resources
322 E Front Street
Boise, Idaho 83720-0098
gary.spackman@idwr.idaho.gov
kimi.white@idwr.idaho.gov
garrick.baxter@idwr.idaho.gov
garrick.baxter@idwr.idaho.gov

Travis L. Thompson
Barker Rosholt & Simpson, LLP
PO Box 63
Twin Falls, Idaho 83303-0063
tlt@idahowaters.com

Sarah A. Klahn
Mitra M. Pemberton
White & Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, Colorado 80202
sarahk@white-jankowski.com
mitrap@white-jankowski.com

Lyle Swank, Watermaster
Water District 01
900 N. Skyline Dr., Ste A
Idaho Falls, Idaho 83402-1718
Lyle.swank@idwr.idaho.gov

John K. Simpson
Travis L. Thompson
Jonas A. Reagan
Barker Rosholt & Simpson, LLP
P.O. Box 63
Twin Falls, Idaho 83303-0063
jks@idahowaters.com
tlt@idahowaters.com
jar@idahowaters.com

U.S. Bureau of Indian Affairs Response to Statements of Issues
Chris M. Bromley  
Candice McHugh  
McHugh Bromley, PLLC  
380 S. 4th Street, Suite 103  
Boise, Idaho 83702  
cbrombley@mchughbromley.com  
cmchugh@mchughbromley.com

Jerry R. Rigby  
Rigby, Andrus & Rigby Law, PLLC  
25 North Second East  
Rexburg, Idaho 83440  
jrigby@rex-law.com

John K. Simpson  
Barker Ros Holt & Simpson, LLP  
P.O. Box 2139  
Boise, Idaho 83701-2139  
jks@idahowaters.com

W. Kent Fletcher  
Fletcher Law Office  
P.O. Box 248  
Burley, Idaho 83318  
wkf@pmt.org

Norman M. Semanko  
Parsons Behle & Latimer  
800 West Main Street, Suite 1300  
Boise, Idaho 83702  
nsemanko@parsonsbehle.com  
cct@parsonsbehle.com

Robert L. Harris  
D. Andrew Rawlings  
Holden, Kidwell, Hahn & Crapo, PLLC  
P.O. Box 50130  
Idaho Falls, Idaho 83405  
rharris@holdenlegal.com  
arawlings@holdenlegal.com

Duane Mecham  
U.S. Department of the Interior  
Bureau of Indian Affairs  
805 SW Broadway, Suite 600  
Portland, Oregon 97205  
duane.mecham@sol.doi.gov

Mr. Steve Howser  
Aberdeen-Springfield Canal Co.  
P.O. Box 857  
Aberdeen, Idaho 83210  
stevch@ascanal.org

Kirk Bybee  
City of Pocatello  
911 North 7th Ave.  
P.O. Box 4169  
Pocatello, Idaho 83201  
kbybee@pocatello.us

U.S. Bureau of Indian Affairs Response to Statements of Issues
W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318

William Bacon
Shoshone-Bannock Tribes
PO Box 306
Fort Hall, Idaho 83203

Edmund Clay Goodman
Hobbs, Straus, Dean & Walker LLP
806 SW Broadway, Suite 900
Portland, Oregon 97205

** service by U.S. mail