

AUG 23 2019

DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF THE PETITION
REGARDING STORAGE RESET IN
WATER DISTRICT 01 FILED BY MILNER
IRRIGATION DISTRICT

Docket No. P-WRA-2017-002

**INTERIM 2019 STIPULATION AND
JOINT MOTION FOR ORDER
APPROVING STIPULATION / JOINT
MOTION FOR STAY**

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley
Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal
Company, and Twin Falls Canal Company (collectively "Surface Water Coalition" or "SWC"),
Fremont Madison Irrigation District, Idaho Irrigation District, North Fork Reservoir Company,
and New Sweden Irrigation District. (collectively "Upper Valley Storage Holders"), the

Coalition of Cities,¹ Idaho Power Company, Aberdeen-Springfield Canal Company, Palisades Water Users, Inc. and the City of Idaho Falls (collectively “PWUI”), the City of Pocatello, the Shoshone-Bannock Tribes, and the United States Department of Interior, Bureau of Indian Affairs (“BIA”), 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, for an interim order including the following procedures in Water District 01 water right administration and accounting for the 2019 irrigation season, and for an order staying the pending contested case to permit the parties to seek a remark adding this language to the final decree in the Snake River Basin Adjudication pursuant to a motion under IRCP 60(b).

BACKGROUND

The procedural and factual background is set forth in the *Stipulation and Joint Motion for Order Approving Stipulation* (“*April Stipulation*”) filed with IDWR on April 10, 2019. The Director did not approve the *April Stipulation* but held follow up status conferences with the parties to discuss the stipulation on May 15 and July 10, 2019. During this time counsel for the U.S. Bureau of Reclamation also sent the Director a letter outlining Reclamation’s position concerning the stipulation. See *Jeremiah Williamson July 8, 2019 Letter to Director Gary Spackman*.

As set forth in the *April Stipulation* and communicated to the Director at the status conferences, the parties intend to seek relief in the SRBA Court this fall. In order to provide an interim resolution pending those proceedings for purposes of the upcoming reservoir storage season, the parties agree to the following for purposes of the 2019 fall reset only.

¹ The Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone and Wendell.

STIPULATION

The parties hereby stipulate to the following:

1. 2019 Storage Reset: The parties agree to the implementation of the following procedures for the reset and accounting of storage water right volumes in Water District 01:

October 1st shall begin the annual period for water right accounting in the Upper Snake River Basin upstream of Milner Dam. October 1st is the beginning date for this annual period is known as the “reset date” for reservoir volumes. The “reset date” allows previously satisfied reservoir water right volumes to begin filling again for the next annual storage volume period.

2. Issuance of Interim Order and Stay of Proceedings by IDWR: The parties intend to present the Operative Language of the *April Stipulation* to the SRBA Court along with a motion pursuant to IRCP 60(b), for inclusion of the Operative Language, or such terms as required by the Court, as remarks in the SRBA Final Decree. The parties hereby move the Director for an order staying this contested case pending a decision by the SRBA Court on said motion, and further, in the interim, to instruct the Water District 01 Watermaster to apply October 1st and the storage reset date for 2019 to the accounting and administration of the storage water right volumes in Water District 01.

3. Approval of Stipulation and Issuance of Interim Order by IDWR. The parties agree to support the Joint Motion for the orders set forth below. If for any reason IDWR does not approve the Stipulation and issue the orders pursuant to the terms of this Stipulation, this Stipulation is null and void and shall have no effect, and the Parties shall have the option to file a motion to lift the stay in this contested case.

4. Limitation on Applicability of Stipulation in Future Matters. This Stipulation is entered into by way of compromise and settlement. Any agreements and conditions herein are due solely to the unique circumstances of this case and the resulting Stipulation. This Stipulation does not

establish any precedent and will not be construed as a commitment to include any specific findings of fact, conclusions of law, or specific engineering methodologies or administrative practices in future stipulations or decrees outside the scope of the dispute in this matter.

5. 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.

6. 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.

7. Binding Effect. This Stipulation shall be binding on any and all successors, assigns, heirs, executors, and administrators of each of the parties.

8. Effective Date. This Stipulation shall become effective upon execution by all of the parties.

JOINT MOTION FOR ORDER APPROVING INTERIM 2019 STIPULATION

The parties hereby jointly move IDWR to approve the foregoing Interim 2019 Stipulation and issue an order incorporating the same into Water District 01 water right administration and accounting procedures for 2019. The parties further jointly move IDWR to stay this contested case pending resolution of the motion(s) to be filed with the SRBA Court this fall.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
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District, North Side Canal Company, and
Twin Falls Canal Company*

FLETCHER LAW OFFICE


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

DATED this 21st day of August, 2019.

BARKER ROSHOLT & SIMPSON LLP

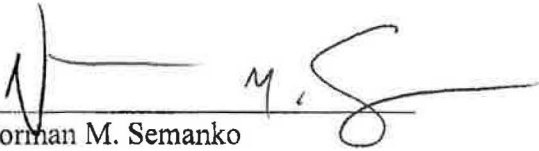


John K. Simpson

Attorneys for Idaho Power Company

DATED this 23 day of August, 2019.

PARSONS BEHLE & LATIMER

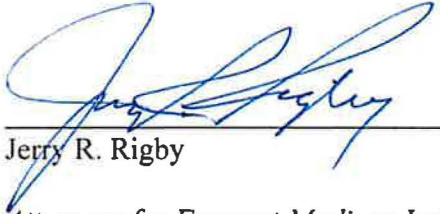


Norman M. Semanko

Attorneys for Aberdeen-Springfield Canal Company

DATED this ____ day of _____, 2019.

RIGBY ANDRUS & RIGBY, CHTD.



Jerry R. Rigby

*Attorneys for Fremont Madison Irrigation District,
Idaho Irrigation District, North Fork Reservoir Company,
and New Sweden Irrigation District*

DATED this 17th day of August, 2019.

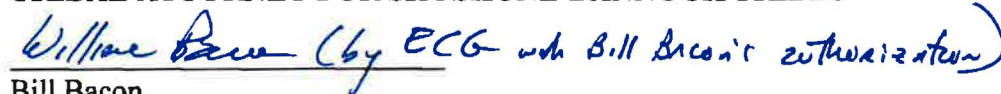
HOBBS STRAUS DEAN & WALKER LLP



Ed Goodman

Attorneys for Shoshone-Bannock Tribes


TRIBAL ATTORNEY FOR SHOSHONE-BANNOCK TRIBES



Bill Bacon

Attorneys for Shoshone-Bannock Tribes

DATED this 19th day of August, 2019.


Duane Mecham

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

DATED this 19th day of August, 2019.

SOMACH SIMMONS & DUNN

A handwritten signature in black ink, appearing to read 'SK', written over a horizontal line.

Sarah A. Klahn

Attorneys for the City of Pocatello

DATED this 20th day of August, 2019.

MCHUGH BROMLEY PLLC




Candice McHugh

*Attorneys for the Cities of Bliss, Burley,
Carey, Declo, Dietrich, Gooding, Hazelton,
Heyburn, Jerome, Paul, Richfield, Rupert,
Shoshone and Wendell*

DATED this 23rd day of August, 2019.

HOLDEN KIDWELL HAHN & CRAPO PLLC




Robert L. Harris

*Attorneys for Palisades Water Users, Inc. and
the City of Idaho Falls*

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August, 2019, I served a true and correct copy of the foregoing *Interim 2019 Stipulation and Joint Motion for Order Approving Stipulation / Motion for Stay* on the following by the method indicated:

Director Gary Spackman c/o Kimi White IDWR 322 E Front St Boise, ID 83720-0098 *** service by U.S. Mail and electronic mail gary.spackman@idwr.idaho.gov kimi.white@idwr.idaho.gov garrick.baxter@idwr.idaho.gov	Sarah A. Klahn Somach Simmons & Dunn 2701 Lawrence St. #113 Denver, Colorado 80205 sklahn@somachlaw.com	William Bacon Shoshone-Bannock Tribes P.O. Box 306 Fort Hall, Idaho 83203 bbacon@sbtribes.com
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Travis L. Thompson