

## MEMORANDUM

To: Governor Otter  
From: Gary Spackman  
Date: February 20, 2013  
Re: **Reservoir Refill**

**Issue:** The U.S. Bureau of Reclamation and some water users initiated a “basin-wide” proceeding in the SRBA to determine whether the water rights for the Bureau’s on-stream reservoirs authorize the Bureau to refill reservoir space, in priority, that has been evacuated for flood control purposes. There are water users supporting and opposing recognition of the right to refill as described in the basin-wide issue.

**Conclusion:** The right to refill vacated flood control reservoir space sought by the Bureau and some water users would result in a change in how water rights have been administered, altering property rights by effectively re-distributing water among the various affected water users. Some water users’ water supplies would be improved, other water users’ water supplies would be diminished. Generally, water users above American Falls Dam would lose and water users below the dam would win. Taking a position in the litigation would result in the executive choosing between those who would benefit and those who would be detrimentally affected.

### Facts

- The Bureau’s water rights for its reservoirs are defined by water right licenses issued by the State.
- The Bureau’s water right licenses are limited to a specified annual volume of water (in acre-feet per year) that may be stored under the priority of the water rights. The licenses do not contain any provisions authorizing refill under the water right’s priority after the annual storage limit has already been reached. Pursuant to Idaho Code 42-220, the licenses are “binding upon the state as to the amount of water mentioned therein.”
- The Director determined over 30 years ago that once the annual volume of the Bureau’s water rights have been stored, refill is subordinate to all other water rights and explained this determination to the water users. *See* IDWR Memo from Alan Robertson to Steve Allred (Aug. 20, 1979) & Committee of Nine Minutes (Sept. 21, 1979). The Watermaster has since administered Bureau water rights in accordance with the Director’s determination.
- The SRBA is a judicial proceeding to define water rights in accordance with state law. Idaho Code 42-1401B requires the Director to be “an independent and technical expert” in the SRBA to assure that water right claims “are accurately reported” to the Court in accordance with state law.
- The State in the SRBA is defending the Director’s established interpretation of the Bureau’s water rights and the Watermaster’s established administration of the rights.
- Recognition of the right to refill reservoir space vacated for flood control might have unintended consequences because each basin and reservoir is unique in the priority of water rights and the ownership of water rights for reservoir storage. For example, the Payette River water users have withdrawn support for refill as proposed.