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DEPARTMENT OF  
WATER RESOURCES

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*Attorneys for United Water Idaho Inc.*

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

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

**UNITED WATER'S MOTION IN LIMINE**

**MOTION**

United Water Idaho Inc. ("United Water"), by and through its attorneys of record, Givens Pursley LLP, hereby objects to the *Irrigation Entities' Joint List of Exhibits for Hearing* ("Joint Exhibit List") and the *Irrigation Entities' Joint List of Witnesses for Hearing* ("Joint Witness List"),<sup>1</sup> filed with the Idaho Department of Water Resources ("IDWR" or "Department") on July 31, 2015, and pursuant to IDWR Rule of Procedure 600, IDAPA 37.01.01.600, moves the Director for an order (1) prohibiting the Irrigators from introducing exhibits, testimony, or other

<sup>1</sup> The Irrigation Entities, or "Irrigators," include: The Boise Project Board of Control, Ballentyne Ditch Company, Boise Valley Irrigation Ditch Company, Canyon County Water Company, Eureka Water Company, Farmers' Co-operative Ditch Company, Middleton Mill Ditch Company, Middleton Irrigation Association, Inc., Nampa & Meridian Irrigation District, New Dry Creek Ditch Company, Pioneer Ditch Company, Settlers Irrigation District, South Boise Water Company, Thurman Mill Ditch Company, Pioneer Irrigation District, New York Irrigation District, and Farmers Union Ditch Company, Ltd.

evidence related to United Water's permitted water right nos. 63-12055 and 63-31409 ("United Water's Permits") or its licensed or decreed water rights,<sup>2</sup> and (2) prohibiting the Irrigators from advancing factual or legal arguments about the nature, extent, or interpretation of United Water's Water Rights, how they should be administered, or how United Water's Permits should be licensed.

United Water specifically objects to and seeks an order prohibiting the introduction of exhibits identified in the *Joint Exhibit List* as set forth in Attachment A attached hereto and incorporated by reference. United Water also objects to and seeks an order prohibiting the witness identified in Attachment A from presenting any evidence, through testimony or otherwise, concerning United Water's Water Rights.

In addition to those documents and the witness listed in Attachment A, United Water objects to and seeks an order prohibiting the introduction of any other exhibit, testimony, evidence, or legal argument related to the nature, extent, or interpretation of United Water's Water Rights, how they should be administered, or how United Water's Permits should be licensed.

### **ARGUMENT**

#### **I. THE DIRECTOR HAS CONSISTENTLY STATED THAT THIS PROCEEDING IS LIMITED TO THE ISSUE OF HOW WATER ACCRUES TO SATISFY WATER RIGHTS FOR THE THREE FEDERAL ON-STREAM RESERVOIRS ON THE BOISE RIVER.**

This contested case proceeding does not involve questions about the nature, extent, or interpretation of United Water's Water Rights (let alone any other natural flow water rights) or how they should be licensed or administered. Since its inception, the Director has consistently

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<sup>2</sup> United Water's Permits and its licensed and decreed water rights, including without limitation water right nos. 2-2339, 2-2341, 2-2358, 2-2420, 63-165L, 63-169F, 63-243E, 63-243H, and 63-31871, are herein referred to collectively as "United Water's Water Rights." Water right nos. 2-2339, 2-2341, 2-2358, 2-2420, and 63-31871 are diverted pursuant to exchanges approved by the Department.

stated that this proceeding concerns only the Department's accounting methods for the storage water rights associated with the Boise River's three federal on-stream reservoirs.<sup>3</sup> The Director must prohibit the Irrigators from introducing evidence or argument outside the limited scope of this proceeding.

Set forth below are statements made by the Director in various orders and notices confirming that the scope of this proceeding is limited to the Department's methods of accounting for the fill or satisfaction of federal on-stream storage water rights in Water District 63.

**A. The Contested Case Notice**

In October 2013, the Director initiated this proceeding "[t]o address and resolve concerns with and/or objections to how water is counted or credited toward the fill of water rights for the federal on-stream reservoirs pursuant to existing procedures of accounting in Water District 63." *Notice of Contested Case and Formal Proceedings, and Notice of Status Conference*, ("Contested Case Notice"), at 6 (Oct. 22, 2013) (emphasis added). The Director explained the impetus for initiating this contested case as follows:

[A]s a result of concerns and objections expressed by the Bureau of Reclamation ("Bureau") and some storage water users . . . it is necessary to initiate contested cases for the purpose of resolving the objections to the existing accounting processes for the distribution of water to the on-stream reservoirs in Water District 1 and Water District 63.

*Contested Case Notice* at 1.

The Director's Findings of Fact and Conclusions of Law in the *Contested Case Notice* overwhelmingly focus on federal on-stream reservoirs. For example:

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<sup>3</sup> The storage water rights associated with the Boise River's three federal on-stream reservoirs are: 63-303 and 63-3613 for Arrowrock reservoir (partial decrees issued June 28, 2007); 63-3614 for Anderson Ranch reservoir (partial decree issued Feb. 25, 2009); and 63-3618 for Lucky Peak reservoir (partial decree issued Dec. 18, 2008).

[Finding of Fact] 1. Most of the federal reservoirs in Water District 1 and Water District 63, and throughout the western United States, are “on-stream” reservoirs. . . .

[Finding of Fact] 2. The operations of the federal on-stream reservoirs in Water District 1 and in Water District 63 are coordinated such that water licensed or decreed to one reservoir often is physically stored in a different reservoir. . . .

[Finding of Fact] 3. The inflow to an on-stream reservoir may consist of a mixture of water available for storage according to the priority of the reservoir's water right(s), water that is storable according to the priority of a different reservoir's right(s), and/or water that is available according to priority to a downstream appropriator of natural flows. Consequently, distributions of water to the federal on-stream reservoirs in Water District 1 and Water District 63 are determined through water right accounting procedures that allow for the releases, operations, and management of on-stream storage, independent from the accrual of natural flow to the on-stream reservoir's water right.

[Finding of Fact] 4. The accounting procedures referenced above have become a source of controversy and litigation. During the past year, the Bureau and some water users have questioned or objected to the accounting methodologies and procedures for “counting” or “crediting” water towards the satisfaction or “fill” of the water rights for the federal on-stream reservoirs in Water District 1 and Water District 63. . . .

[Finding of Fact] 6. No formal administrative record has been developed to document how and why existing accounting procedures “count” or “credit” water towards the satisfaction or “fill” of the water rights for the federal on-stream reservoirs in Water District 1 or those in Water District 63.

[Finding of Fact] 7. Fully developed administrative records are necessary to: (1) catalogue the concerns and objections raised by the Bureau and the water users that relate to the accounting methods for “counting” or “crediting” water towards the water rights for the federal on-stream reservoirs; (2) resolve potential factual issues raised in the concerns and objections; (3) address concerns and objections that the existing accounting procedures for the federal on-stream reservoirs in Water District 1 and in Water District 63 were not adequately documented or explained to the Bureau and the water users when originally implemented in each of those districts; (4) resolve ambiguities and terminology



problems that have at times resulted in confusion and have complicated attempts to define and resolve the concerns and objections raised by the Bureau and the water users.

[Conclusion of Law] 2. The provisions of Chapter 6 addressing the distribution of water to and the regulation of diversions by conventional “facilities” such as “canals, ditches, [and] pumps,” Idaho Code§ 42-602, also apply to the diversion facilities for the federal reservoirs that store water under Idaho water rights in Water District 1 and in Water District 63. . . .

[Conclusion of Law] 3. The diversion “facilities” for the federal on-stream reservoirs in Water District 1 and in Water District 63 are the federal dams that create the impoundments. Thus, the watermasters of Water District 1 and Water District 63 as supervised by the Director must distribute water to and regulate diversions by the federal dams in accordance with the water rights for the federal on-stream reservoirs and the prior appropriation doctrine as established by Idaho law.

[Conclusion of Law] 4. As a result of the operation of the federal dams and on-stream reservoirs in Water District 1 and in Water District 63, the storable inflow to a particular reservoir on a particular day may consist of water that is available for storage according to the reservoir's water right and water available for storage or appropriation according to other rights; and some of the water available for storage according to a particular reservoir's water right may be physically stored in a different reservoir. Consequently, the distribution of water to, and the regulation of diversions by, the federal on-stream reservoirs in accordance with the prior appropriation doctrine must be accomplished through accounting methods and procedures that determine which flows are to be “counted” or “credited” towards the reservoirs’ water rights.

[Conclusion of Law] 5. The accounting methods and procedures for “counting” or “crediting” water to the federal on-stream reservoirs in Water District 1 and Water District 63 for purposes of distributing water to the reservoirs and regulating out-of-priority diversions are of significant interest and concern to the Bureau and storage water users. The Bureau holds legal title to the water rights for the reservoirs and the storage water users hold “title to the use of the water.”

[Conclusion of Law] 6. It is necessary, for purposes of identifying and resolving concerns with and objections to the existing accounting methods and procedures in Water District 1

and Water District 63 to develop formal administrative records fully documenting: (1) how and why water is "counted" or "credited" to the water rights for reservoirs pursuant to the existing accounting methods and procedures; (2) the origin, adoption, and development of the existing accounting methods and procedures in; and (3) appropriate changes, if any to the existing procedures as they may relate to federal flood control operations.

*Contested Case Notice* at 1-5.

Based on these findings and conclusions, the Director ordered the initiation of this contested case for the following purpose:

To address and resolve concerns with and/or objections to how water is counted or credited toward the fill of water rights for the federal on-stream reservoirs pursuant to existing procedures of accounting in Water District 63.

*Contested Case Notice* at 6. He further ordered that “water users with rights to divert, store, or use water in Water District 63 that have concerns and/or objections regarding how water is counted or credited toward the fill of water rights for the federal on-stream reservoirs in Water District 63 are to submit statements of the concerns and/or objections to the Department,” and similarly that “water users with rights to divert, store, or use water in Water District 63 that support how water is counted or credited toward the fill of water rights for the federal on-stream reservoirs in Water District 63 may submit statements in support of the current accounting method.” *Contested Case Notice* at 6.

#### **B. The Cover Letter**

In his October 23, 2013 cover letter enclosing the *Contested Case Notice* (“Cover Letter”), the Director explained:

Water users in Water District 63 recently raised some concerns about how current water right accounting processes determine when a storage water right is filled. The original concerns were raised by holders of rights to water stored in the federally owned on-stream storage reservoirs. . . . The Department has decided to commence a formal proceeding to address the

concerns about how the water right accounting determines when a storage water right is filled.

*Cover Letter* at 1.

### **C. The Order Lifting Stay**

On September 10, 2014, in connection with lifting a previously imposed stay in this matter, the Director notified the parties that he would request a memorandum from Department staff explaining: “(1) how and why water is counted or credited to the water rights for reservoirs in Basin 63 pursuant to the existing accounting methods and procedures; and (2) the origin, adoption, and development of the existing accounting methods and procedures in Water District 63.” *Order Lifting Stay and Notice of Status Conference* (“*Order Lifting Stay*”) p. 2 (Sep. 10, 2014). On November 4, 2014, Liz Cresto, IDWR Technical Hydrologist, responded to the Director’s request by issuing a memorandum addressing these two questions.

### **D. The First Scheduling Order**

In his October 14, 2014 *Scheduling Order; Notice of Hearing; Order Authorizing Discovery* (“*First Scheduling Order*”), the Director rejected a request “to modify the scope of the proceeding to only address whether flood control releases count against a storage water right.” *First Scheduling Order* at 3. The Director explained:

The fundamental question in this proceeding is how water is counted or credited towards the fill of a water right. This is the question certain parties to Basin-Wide Issue 17 sought to have answered and which remains unanswered. The Idaho Supreme Court recognized that the key question is how water rights are filled or satisfied and spent considerable time discussing this topic:

We agree with the Boise Project Board and the SRBA that the question of when a storage water right is filled presents a mixed question of fact and law. Indeed, the complex and historically dense contents of the Shelley Davis affidavit, along with the parties’ attempts to prove when a storage water right is filled by using reservoir-specific historical practices, support the conclusion that determining

when a water right is filled requires the development of a factual record. There is an administrative procedure for fleshing out these factual interpretations if the SRBA court chooses to address the issue of fill on remand.

*First Scheduling Order* at 3, quoting *A&B Irrigation Dist. v. State* (“A&B”), 157 Idaho 385, 392, 336 P.3d 792, 799 (2014) (internal citations omitted; emphasis added).

#### **E. The Pre-Hearing Motion Order**

In his December 16, 2014 *Order Denying Pre-Hearing Motions* (“*Pre-Hearing Motion Order*”), the Director repeatedly confirmed that this contested case involves only accounting methods for storage water rights associated with the three Boise River federal on-stream reservoirs. First, citing the statements quoted above from the *Contested Case Notice and Order Lifting Stay*, he stated:

On October 24, 2013, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued a Notice of Contested Case and Formal Proceedings, and Notice of Status Conference (“Notice”) in the above referenced matter announcing his decision to initiate a contested case and formal proceedings regarding accounting for the distribution of water to the federal on-stream reservoirs in Water District 63. . . .

On September 10, 2014, the Director . . . notified the parties the Director would request a Department staff memorandum (“Staff Memo”) explaining: (1) how and why water is counted or credited to the water rights for reservoirs in Basin 63 pursuant to the existing accounting methods and procedures; and (2) the origin, adoption, and development of the existing accounting methods and procedures in Water District 63.”

*Pre-Hearing Motion Order* at 1 (emphasis added).

Then, in denying the Boise Project Board of Control’s October 28, 2014 *Motion to Dismiss Contested Case Proceedings and Initiate Negotiated Rulemaking and Memorandum in Support*, the Director explained:

In the contested case before the Department, the agency is not creating numerical standards. The numerical standards-the

quantity elements of water rights—were determined by the Snake River Basin Adjudication (“SRBA”) Court. The Department does not propose to change or modify the decreed quantities of the water rights at issue in this proceeding, nor could it do so. Rather, this contested case addresses parties’ concerns with and/or objections to methods and procedures employed by the Department to determine when the numerical limit—the decreed quantity—has accrued to federal on-stream reservoirs in Water District 63. . . .

*Asarco [Inc. v. State, 138 Idaho, 719, 723, 69 P.3d 139, 143 (2003)]* does not require the Director to promulgate rules to address water users’ concerns and/or objections to existing accounting methods and procedures employed by the Director to determine when sufficient water has been distributed to federal on-stream reservoirs in Water District 63 to satisfy the numerical limits in this case the decreed quantities of the storage water rights.

. . .

The process of addressing and resolving water users’ concerns and objections to the existing methods and procedures of accounting for distributions to the federal on-stream reservoirs in Water District 63 is directly related to the Director’s exercise of his technical expertise and his statutory authority and discretion to distribute water to, and regulate diversions by, the federal on-stream reservoirs in Water District 63. . . .

This contested case proceeding will provide an opportunity for parties to identify their concerns with and/or objections to existing methods and procedures of counting/crediting water to federal on-stream reservoirs in Water District 63. . . . Without a record explaining how water is counted/credited to the reservoirs at issue under existing methods and procedures, the water users will not be able to identify the concerns or objections they have to the existing system. . . .

**This proceeding will consider how water accrues to satisfy water rights for only three reservoirs, which are owned and operated by a single entity, the United States government. .**

. .

**This contested case applies only to the three federal on-stream reservoirs in Water District 63. . . .**

Part of the intent of this proceeding is to examine the existing water district operations and provide information on the methods and procedures of counting/crediting water to federal on-stream reservoirs in Water District 63. . . .

In this contested case, the Director is exercising his legal duty to distribute water pursuant to the prior appropriation doctrine, not prescribing a legal standard. The legal standards at issue are the quantity elements of the storage water rights, which were decreed by the SRBA Court. This proceeding does not, and



cannot, seek any change in that legal standard. This proceeding is intended to address concerns and objections to existing methods and procedures used by the Director to determine when those legal standards have been met. . . .

The SRBA Court has decreed the quantity element of the water rights at issue and the Director is under a statutory duty to distribute that quantity; the existing accounting methods and procedures are an exercise of the Director's discretion to determine the details of how to perform this executive duty. . . .

In sum, *Asarco* does not require the Director to address water users' concerns and objections to the existing methods and procedures of accounting for distributions of water to the federal on-stream reservoirs in Water District 63 through rulemaking. . . .

In sum, nothing in Section 8 of the 1902 Reclamation Act or in Idaho law requires the Director to use rulemaking to address and resolve concerns with and/or objections to how water is "counted" or "credited" to the federal on-stream reservoirs in Water District 63. . . .

Further, this proceeding does not seek relief against any party but rather addresses the Director's exercise of his statutory authority and discretion to control and direct the distribution of water in accordance with Idaho law, and was initiated specifically to address the parties' concerns with and/or objections to how water is "counted" or "credited" to the federal on-stream reservoirs in Water District 63 under existing accounting methods and procedures. . . . The outcome will be a decision addressing the Director's exercise of his statutory duty and authority to distribute water in accordance with Idaho law, and concerns and/or objections regarding existing accounting procedures for "counting" or "crediting" water to the federal on-stream reservoirs in Water District 63. . . .

As previously discussed, the object of this contested case is the Director's performance of his statutory duty to direct and control the distribution of water in accordance with Idaho law, specifically with regard to existing accounting methods and procedures applicable to the federal on-stream reservoirs in Water District 63. The Director in distributing water does not and may not determine the water rights of appropriators; rather he must distribute water in accordance with licensed and decreed water rights. . . .

The Director's Cover Letter states:

. . . . Water users in Water District 63 recently raised some concerns about how current water right accounting processes determine when a storage water right is filled. The original concerns were raised by holders of rights to water stored in the federally owned on-stream

storage reservoirs. Some of the issues are now before the Department for determination. The Department has decided to commence a formal proceeding to address the concerns about how the water right accounting determines when a storage water right is filled. . . .

The [*Contested Case*] Notice explains that the Director “concludes it is necessary to initiate contested cases for the purpose of resolving objections to the existing accounting processes for the distribution of water to the on-stream reservoirs in [Water District 63].” The Director's Cover Letter and [*Contested Case*] Notice constitute an appropriate “notice” of formal proceedings as required by [Department] Rule [of Procedure] 104.

. . .

*Pre-Hearing Motion Order* at 3-7, 9-13 (emphasis added; internal citations and footnotes omitted).

In his *Pre-Hearing Motion Order*, the Director also denied the *Pre-Hearing Motions Submitted by the Ditch Companies* (Oct. 28, 2014) (“*Pre-Hearing Motions*”). In the *Pre-Hearing Motions*, the Ditch Companies argued that the Director should dismiss or stay this contested case “until resolution of the late claims by the SRBA Court.” *Pre-Hearing Motions* at

5. The Ditch Companies contended:

In short, the issue which the Idaho Supreme Court and SRBA Court defined as the more important issue, “whether water released for flood control purposes counts toward the initial fill of a water right”, is before the SRBA Court as part of the late claims. The SRBA Court has not indicated whether and how it will address the issue but until and if the SRBA Court declines to address the issue the Director should not proceed with his own contested case on the very same issue.

*Pre-Hearing Motions* at 5 (emphasis added). The Director rejected this argument, explaining:

The Ditch Companies are incorrect that the issue of whether water released for flood control purposes counts toward the initial fill of a water right is before the SRBA Court as part of the late claims. Rather, this issue is squarely before the Director as the Idaho Supreme Court recently explained in the case involving Basin-Wide Issue No. 17. *In re SRBA*, 157 Idaho at 393, 336 P.3d at 800.

That decision affirms the Director's authority to determine how water is counted or credited toward the fill of a water right. *Id.* Accordingly, the question of whether flood control releases count towards the fill of a water right is for the Director to answer.

*Pre-Hearing Motion Order* at 14 (emphasis added). Obviously, the Ditch Companies' and the Director's statements about "whether water released for flood control purposes counts toward the initial fill of a water right" concerns storage water rights associated with the federal on-stream reservoirs on the Boise River.

The Ditch Companies also argued that the question of "whether water released for flood control purposes counts toward the initial fill of a water right" is the question that must be addressed in this contested case "as a prerequisite to any consideration of how to account for storage and distribution of water from and through Boise River reservoirs." *Pre-Hearing Motions* at 9. The Director rejected this argument, stating:

In the [*Contested Case Notice*], the Director defined the issue for hearing as:

TO ADDRESS AND RESOLVE CONCERNS  
WITH AND/OR OBJECTIONS TO HOW  
WATER IS COUNTED OR CREDITED  
TOWARD THE FILL OF WATER RIGHTS  
FOR THE FEDERAL ON-STREAM  
RESERVOIRS PURSUANT TO EXISTING  
PROCEDURES OF ACCOUNTING IN  
WATER DISTRICT 63

[*Contested Case*] *Notice* at 6. In the [*First Scheduling Order*], the Director noted that, "[a]t the October 7, 2014, status conference, a request was made for the Director to modify the scope of the proceeding to only address whether flood control releases count against a storage water right."

[*First*] *Scheduling Order* at 3. The Director declined to modify the scope of this contested case at that time. *Id.* The Director concluded that the question of how water is counted or credited toward the fill of water rights for the federal on-stream reservoirs is the key question to be resolved and is the question that will be addressed in this contested case proceeding.

The Ditch Companies are incorrect that the question of whether water released for flood control purposes counts toward the initial fill of a water right must be answered as a prerequisite to any consideration of how to account for storage and distribution of water from and through Boise River reservoirs. The question as framed by the Ditch Companies can only be answered after answering the question of how water is counted toward the initial fill of water rights for the federal on-stream reservoirs under existing accounting procedures.

*Pre-Hearing Motion Order* at 15.

**F. The Fifth Amended Scheduling Order**

In his May 20, 2015 *Fifth Amended Scheduling Order; Notice of Hearing* (“*Fifth Amended Scheduling Order*”), the Director has confirmed that the issue to be addressed at the hearing is the same issue defined in his *Contested Case Notice*: “To address and resolve concerns with and/or objections to how water is counted or credited toward the fill of water rights for the federal on-stream reservoirs pursuant to existing procedures of accounting in Water District 63.” *Fifth Amended Scheduling Order* at 2 (emphasis added). As he did in his *First Scheduling Order*, the Director explained:

The fundamental question in this proceeding is how water is counted or credited towards the fill of a water right. This is the question certain parties to Basin-Wide Issue 17 sought to have answered and which remains unanswered. *In re SRBA*, 157 Idaho 385, 388-89, 336 P.3d 792, 795-96 (2014). The Idaho Supreme Court recognized that the key question is how water rights are filled or satisfied and spent considerable time discussing this topic:

We agree with the Boise Project Board and the SRBA that the question of when a storage water right is filled presents a mixed question of fact and law. Indeed, the complex and historically dense contents of the Shelley Davis affidavit, along with the parties’ attempts to prove when a storage water right is filled by using reservoir-specific historical practices, support the conclusion that determining when a water right is filled requires the development of a factual record. There is an

administrative procedure for fleshing out these factual interpretations if the SRBA court chooses to address the issue of fill on remand.

*Id.* at 392, 336 P.3d at 799.

The Court also stated: “This Court has recognized the Director’s discretion to direct and control the administration of water in accordance with the prior appropriation doctrine. . . . And implicit in providing each user its decreed water would be determining when the decree is filled or satisfied.” *Id.* at 394, 336 P.3d at 801. This question of how water is counted or credited toward the fill of water rights is the key question to be resolved and is the question that should be addressed in this proceeding.

*Fifth Amended Scheduling Order*, pp. 2-3 (emphasis supplied).

## **II. UNITED WATER’S WATER RIGHTS ARE NOT AT ISSUE IN THIS PROCEEDING.**

United Water’s Water Rights are natural flow water rights, not storage water rights (let alone federal on-stream storage rights). Accordingly, they do not fall within the scope of the contested case proceeding defined by the Director.

Indeed, there is no reason to look at any other water rights to determine how water is or should be counted or credited toward the fill of federal on-stream storage water rights. Basic prior appropriation principles require that senior rights are filled ahead of junior rights, and junior rights can be satisfied so long as senior rights are satisfied.

It would be unfairly prejudicial to United Water, and a violation of its due process rights, to allow the introduction of evidence or arguments as to the nature, extent, or interpretation of United Water’s Water Rights, how they should administered, or how United Water’s Permits should be licensed. As set forth above, the Director has clearly limited the scope of this contested case to “how water is counted or credited toward the fill of water rights for the federal on-stream reservoirs pursuant to existing procedures of accounting in Water District 63.” *Contested Case Notice* at 6. *See also Pre-Hearing Motion Order* at 5-6 (“This proceeding will consider how water accrues to satisfy water rights for only three reservoirs, which are owned and



operated by a single entity, the United States government. . . . This contested case applies only to the three federal on-stream reservoirs in Water District 63.”). There has been no indication that this proceeding would involve anything outside this limited scope, and certainly no notice that United Water’s Water Rights would be at issue. In particular, allowing evidence or arguments in this proceeding concerning how United Water’s Permits should be administered or licensed would constitute an impermissible collateral attack on United Water’s Permits. *See Matter of Permit No. 47-7680*, 114 Idaho 600, 604–05, 759 P.2d 891, 895–96 (1988) (illustrating that the proper time to challenge a permitted water right is at the time permit is issued or amended).

**III. THE DIRECTOR MUST PROHIBIT INTRODUCTION OF THE EXHIBITS AND WITNESS LISTED IN ATTACHMENT A, AS WELL AS ANY OTHER EXHIBIT, TESTIMONY, EVIDENCE, OR LEGAL ARGUMENT RELATED TO THE NATURE, EXTENT, OR INTERPRETATION OF UNITED WATER’S WATER RIGHTS, HOW THEY SHOULD BE ADMINISTERED, OR HOW UNITED WATER’S PERMITS SHOULD BE LICENSED.**

The Director may “exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho.” IDAPA § 37.01.01.600.

The exhibits listed in Attachment A relate to United Water’s Water Rights (and primarily United Water’s Permits) which, as already described, are not at issue in this proceeding. Based on an affidavit the witness listed in Attachment A (Mr. Ed Squires) provided on behalf of the Irrigators in the pending SRBA proceedings (an affidavit which specifically addressed United Water’s permit no. 63-12055), United Water anticipates the Irrigators intend to illicit testimony from Mr. Squires on the subject of United Water’s Water Rights.

As already discussed, United Water’s Water Rights have no relevance on the issue of how water is counted or credited toward the fill of federal on-stream storage rights. Accordingly, the Director must prohibit the introduction of the exhibits listed in Attachment A,

and any evidence provided by Mr. Squires through testimony or otherwise on the subject of United Water's Water Rights, including United Water's Permits. The Director also must prohibit any other exhibit, testimony, evidence, or legal argument related to the nature, extent, or interpretation of United Water's Water Rights, how they should be administered, or how United Water's Permits should be licensed.

United Water reserves the right to object to any evidence or testimony prior to or at the hearing in this matter.

### CONCLUSION

United Water respectfully requests that the Director grant *United Water's Motion in Limine*.

DATED this 7<sup>th</sup> day of August, 2015.

Respectfully submitted,

GIVENS PURSLEY LLP

By

A handwritten signature in blue ink, appearing to read 'CHM', is written over a horizontal line.

Christopher H. Meyer  
Michael P. Lawrence  
*Attorneys for United Water Idaho Inc.*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7<sup>th</sup> day of August, 2015, the foregoing was filed, served, and copied as follows:

#### DOCUMENT FILED:

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Michael P. Lawrence



## ATTACHMENT A

<b>Document<sup>4</sup> Date</b>	<b>Document Description</b>	<b>Citation to <i>Joint Exhibit List</i></b>
10/8/1993	1993-10-08 Application for Permit 63-12055	Exhibit List, p. 18
1/21/1994	Memorandum from Dave Tuthill to Wayne Haas contained in the Idaho Department of Water Resources backfile for water right application no. 63-12055	Exhibit List, p. 18
2/23/1994	Information Submission Pursuant to IDAPA 37.03.08 § 040.05 filed with the Idaho Department of Water Resources re water right no. 63-12055	Exhibit List, p. 18
10/3/2001	Letter from H. Scott Rhead of United Water to Mr. C. Stephen Allred, Director of the Idaho Department of Water Resources re water right no. 63-31409	Exhibit List, p. 19
On or after 6/28/2002	Beneficial Use Field Report of United Water Idaho Inc.'s Permit No. 63-12055	Exhibit List, p. 19
11/6/2012	Water Right Report for Water Right No. 63-31409	Exhibit List, p. 19
11/7/2012	Water Right Reports for Water Right Nos. 63-00169F and 63-00243E	Exhibit List, p. 19
3/6/2015	Water Permit Report for Water Right No. 63-12055 (Joint Exhibit List, Exhibit List, p. 20);	Exhibit List, p. 20
[Undated]	Idaho Department of Water Resources water right report for water right claim no. 63-31409	Exhibit List, p. 23
[Undated]	Stipulation and Withdrawal of Protest prepared by counsel for United Water and signed by the parties and protestants in water right claims no. 63-31409	Exhibit List, p. 23

	<b>Witness</b>	<b>Citation to <i>Joint Witness List</i></b>
	Ed Squires, President and Managing Hydrologist, Hydro Logic, Inc. and former Manager and Hydrologist, United Water Idaho, Inc.	<i>Joint Witness List</i> , p. 2

<sup>4</sup> The "Document Date" and "Document Description" fields in this table correspond to the "Date" and "General Description" fields in the *Joint Exhibit List*.