

BRAD LITTLE Governor GARY SPACKMAN Director

February 27, 2020

Water District 63 Water User,

In compliance with Stipulation 16 of the "Refill" stipulated agreement signed in 2018, the Idaho Department of Water Resources (IDWR) is providing notice of the proposed updates to the Boise Water Right Accounting Program. IDWR prepared the attached technical memo describing the proposed updates. We are sending this letter to the WD63 Watermaster, WD63 Advisory Committee, and each signatory of the stipulated agreement. We will also post this memo on the IDWR website.

Consistent with Stipulation 16, WD63 water users can submit written comments regarding the proposed updates. The deadline for submitting comments is March 23, 2020. IDWR will try to respond to all comments in the form of a letter before implementing the new updates in the water right accounting.

Submit Comments To:

Matt Anders IDWR 322 East Front St PO Box 83720 Boise ID, 83720

Feel free contact me with questions at (208) 287-4932 or matthew.anders@idwr.idaho.gov.

Sincerely,

Nolt

Matt Anders Hydrology Section Supervisor



State of Idaho Department of Water Resources 322 E Front Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700

Date:	2/27/2020
To:	Mat Weaver, Deputy Director
From:	Matt Anders, Hydrology Section Supervisor
CC:	Garrick Baxter, Deputy Attorney General Sean Vincent, Hydrology Section Manager
Subject:	Implementation of the Refill Stipulated Agreement in the Boise Water Right Accounting

Introduction

The contested case titled "*In the Matter of the Accounting for the Distribution of Water to the Federal On-Stream Reservoirs in Water District 63*" ("Refill") was initiated in 2013 and settled through a stipulated agreement in 2019. The agreement included several stipulations related to the Idaho Department of Water Resources ("IDWR") Boise Water Right Accounting Program ("water right accounting"). The purpose of this memo is to document IDWR's proposed implementation of the stipulations included in the agreement related to water right accounting.

Background

Water Right Accounting

Water right accounting is a computational program that the Water District 63 ("WD63") Watermaster ("Watermaster") uses to (1) quantify the natural flow available for delivery to water rights, (2) track natural flow and storage use, and (3) determine the water right priority in each reach of the Boise River. The water right accounting is run after-the-fact. It distributes natural flow to water rights using a daily iterative loop and generates a daily record.

When executed, the water right accounting calculates the amount of natural flow that is available to satisfy water rights in each reach of the river. A river reach is defined as a river segment within a basin that has beginning and ending points that are measured or calculated. Natural flow is a calculated value of the water available in a given river reach expressed in cubic feet per second ("cfs"). If the calculated value is positive, the natural flow is said to be a "gain." If the calculated value is negative, the natural flow is said to be a "loss." The reach gain calculation is equal to the reach outflow minus the reach inflow, plus all reach diversions, plus the change in reservoir content, plus reservoir evaporation.

Reach Gain = Outflow – Inflow + Σ (Diversions) + Δ Reservoir Content + Reservoir Evaporation

Following the calculation of available natural flow in each reach, the water right accounting executes a water right accrual routine ("accrual routine") to determine the amount of natural flow diverted by each diversion. Natural flow delivery to diversions is based on the Prior Appropriation Doctrine. The priority date of a water right indicates when the water right was first developed and its relative delivery sequence when compared to other water rights. An earlier (or senior) priority water right is delivered natural flow ahead of a later (or junior) priority water right when the natural flow is insufficient to fill all water rights in a reach.

To determine the priority sequence of delivery, the accrual routine relies on a master water right list ("RTS") as an input file to the water right accounting. Water rights are generally arranged on the RTS by priority date with the most senior water right at the top of the list and the most junior at the bottom. When a new water right is added to the RTS, IDWR staff carefully review all of the elements of the water right, all conditions, and appurtenant stipulations to ensure the Watermaster administers the water right consistent with the requirements of the water right. Following a careful review, IDWR staff modify the RTS to include the new water right. Sometimes, depending on the elements of a water right, a water right can be placed in the RTS based on its effective priority date and not on its actual priority date.¹

When the accrual routine is executed, the first water right from the RTS is selected. Depending on how much natural flow is available in the river reach in which the water right point of diversion resides, the accrual routine will accrue a flow rate up to the diversion limits of the water right and subtract that accrual from the remaining natural flow available in that reach and all downstream reaches. The accrual routine then selects the next right from the RTS and implements the accrual process again. The accrual routine continues until either all the water rights on the list are satisfied, or the remaining natural flow in the most downstream reach of the river (the Middleton reach for the Boise River) is equal to zero. When the natural flow is insufficient to meet the entire amount of water diverted at a diversion, the diversion is charged storage in an amount equal to the difference between the natural flow available and the actual flow diverted. Any remaining natural flow in the Middleton reach of the river is considered unused water leaving the system that is available for appropriation.

The Day of Allocation occurs on the day when the reservoir fill available for spaceholders' allocations has reached its maximum. IDWR staff and the Watermaster currently use three criteria to determine the Day of Allocation for the Boise basin: 1) the remaining natural flow in the Middleton reach is zero, 2) the maximum physical contents of the reservoir system for the irrigation season has occurred, and 3) the last day of accrual to unfilled reservoir rights following the peak runoff has occurred. Reservoir water rights are out of priority after the Day of Allocation until later in the irrigation season when user demand decreases and the water right accrual values in accounting are reset to zero.

Flood Control Operations

The reservoir system is generally operated throughout the year to store as much water as possible. The exception to this general rule is the release of water from the reservoirs for flood control. Flood control releases are reservoir operations whereby stored water is evacuated from

¹ As an example, a hydro power water right could be licensed or decreed with a specific priority date, but subordinated through a condition or remark to all future non-hydro power water rights. In this instance, the hydro power water right's effective priority date would likely be junior to its actual priority date. In addition, the effective priority date changes every time a new junior non-hydro power water right is subsequently added to the water right accounting to ensure that it remains subordinate to "future uses."

a reservoir before and during peak inflows. These releases allow the reservoir to maintain adequate vacant space to capture water during peak inflows and to release less water from the reservoir than is entering the reservoir to prevent or lessen downstream flooding.

The United States Bureau of Reclamation ("Reclamation") and Army Corps of Engineers ("Corps") jointly operate the Arrowrock, Anderson Ranch, and Lucky Peak dams as a system to manage flood control and water storage needs. The Reclamation and Corps do not rely on the water right accounting to determine or inform their reservoir operations.

The refill water rights, which are the subject of this technical memo, were established to authorize the legal storage of water in the reservoirs during and after flood control releases when the primary reservoir water rights are satisfied. They will be discussed in greater detail below.

Implementation of the Refill Water Rights Stipulated Conditions

The following sections focus on how IDWR proposes to update water right accounting to implement the stipulated agreement. The primary intent of this technical memo is to sufficiently describe and detail the proposed changes to water right accounting such that the signatories to the stipulation and all water users in Water District 63 can evaluate the proposed changes and submit written feedback to IDWR if needed.

Stipulation Paragraph 16

Stipulation 16 on page 8 of the stipulated agreement reads as follows:

The Parties stipulate and agree that upon issuance of the partial decrees for water right nos. 63-33734A and 63-33734B, the Department will update the Water District 63 water right accounting system to account for the distribution of water to water right nos. 63-33734A and 63-33734B consistent with their partial decrees. The Department will provide the Parties, the Water District 63 Advisory Committee, the Water District 63 Watermaster, and all water right holders in Water District 63 with notice of, and an opportunity to submit comments on, the proposed updates to the accounting system. Any aggrieved Parties may request a contested case on these matters, but such a contested case will be limited to preclude raising any issues raised or addressed in the Contested Case that was the subject of the judicial review proceedings in Case No. CV-WA-2015- 21376 (Consolidated Ada County Case No.CV-WA-2015-21391).

IDWR added water rights 63-33734A ("Refill 1") & 63-33734B ("Refill 2") to the RTS used in water right accounting to satisfy this stipulation. The priority date and subordination clauses of the Refill 1 water right (see Attachment A) resulted in its sequential placement in the RTS as water right number 954. Refill 1's sequential location makes it the most junior water right in water right accounting (see Attachment G). The priority date and subordination clauses of the Refill 2 water right (see Attachment B) resulted in its sequential placement in the RTS as water right number 949. Refill 2's sequential location makes it the sixth most junior water right in water right accounting (see Attachment G). The sequential placement in the RTS as water right number 949. Refill 2's sequential location makes it the sixth most junior water right in water right accounting (see Attachment G). The sequential locations of the Refill 1 and 2 water rights in the RTS may change over time as new water rights are established on the Boise River and added to the water right list.

The Refill 2 water right has a provision stating that the Watermaster will only allow it to accrue water when he has received notice in writing from Reclamation that it intends to store water pursuant to the Refill 2 water right (see Attachment B). The ability to "turn on" the accrual of water to the Refill 2 water right, and subsequently "turn off" accrual to the water right, is unique to all other storage water rights in WD63. This provision is informally referred to as the "on/off switch." To implement the on/off switch provision, IDWR updated the water right accounting in two ways. First, IDWR added a new artificial diversion with the number "15201505" to the IDWR Watermaster Data Entry Software

(https://idwr.idaho.gov/apps/wm/DiversionDataApplication). This data entry software is used by watermasters throughout Idaho to enter water user diversion data. While the general public can view the data, only water district staff authorized by IDWR can enter data into the application. The Watermaster will enter a "1" in diversion "15201505" for each day of the year that the Refill 2 water right is authorized to accrue natural flow and a "0" for each day the Refill 2 water right is not authorized to accrue natural flow. IDWR selected this method because it creates a historical record of accrual to Refill 2 that can be viewed by the public in near-real-time. Second, to implement the new on/off switch provision, IDWR added new code to water right accounting (see Attachment C). The new code was added to the accrual routine to determine each day if the accrual of natural flow to the Refill 2 water right is authorized by the Watermaster. If the Watermaster has authorized accrual to Refill 2, all available natural flow in the reach is accrued to the water right until or unless its volume limit has been satisfied. If the Watermaster has not authorized diversions, the diversion rate for the Refill 2 water right is set to zero cfs for that accounting day.

Staff in IDWR's Hydrology Section tested the updates made to water right accounting to implement the Refill 1 and 2 water rights using data from the 2017 water year. The Refill 1 water right came into priority and began accruing natural flow after all the primary reservoir water rights were satisfied, and all natural flow demand was satisfied. The Refill 2 water right accrued water when it was in priority and authorized by the Watermaster to do so. Based on the testing results, IDWR concludes that its updates to water right accounting have produced the intended results.

Adding the Refill 1 and 2 water rights to water right accounting impacts the remaining natural flow below Lucky Peak Reservoir. When the Refill 1 and 2 water rights are in priority they accrue all available natural flow at Lucky Peak Dam. It is important to note that the accrual of water to the refill water rights does not necessarily mean that the accrued water is physically stored in the reservoirs. It will often be the case that water accrued to the refill water rights will physically flow through or be released from the reservoirs during times of accrual. As a result, accruals to the refill water rights will reduce the remaining natural flow available to satisfy water rights in reaches downstream of Lucky Peak Reservoir (see Attachment D). The only natural flow available to satisfy junior water rights in reaches downstream of Lucky Peak Reservoir (see Attachment D). The only natural flow available to satisfy in reaches downstream of the Refill 1 and 2 water rights does not change the amount of water in the Middleton reach available for appropriation. The stored flow in the Middleton reach in excess of deliveries to existing water right holders is considered unused water leaving the system that is available for appropriation.

Adding the refill water rights to water right accounting impacts one of the criteria used to determine the Day of Allocation. Because the refill water rights do not have diversion rate limits, their addition to the water right accounting causes the remaining natural flow in the Middleton reach to equal zero cfs any time natural flow demand below Lucky Peak Reservoir exceeds the reach gains below Lucky Peak Reservoir. As a result, the remaining natural flow at Middleton is

no longer a useful criterion to determine the Day of Allocation. Moving forward, IDWR and the Watermaster will rely on only two criteria to determine the day of allocation. The Day of Allocation will be determined to have occurred when (1) the reservoir system has reached maximum physical contents for the irrigation season, and (2) the last day of accrual to unfilled reservoir rights following the peak runoff has occurred.

In compliance with this stipulation, IDWR has noticed water users of the proposed updates to water right accounting. IDWR presented the proposed water right accounting updates at the Water District 63 Advisory Committee Meeting on December 11, 2019, and the Water District 63 Annual Meeting on January 13, 2020. IDWR prepared this technical memo describing the proposed updates to water right accounting. IDWR will post this memo on its website and send it to the Watermaster, WD63 Advisory Committee, and each signatory of the stipulated agreement.

Consistent with this stipulation, WD63 water users can submit written comments regarding the proposed refill water right updates to water right accounting to IDWR in the manner described in the cover letter that will accompany the distribution of this technical memo. IDWR will try to respond to all comments in the form of a letter before implementing the new updates in the water right accounting.

Stipulation Paragraph 17

Stipulation 17 on page 8 of the stipulated agreement reads as follows:

For all future material modifications of the Water District 63 water right accounting system IDWR will provide notice and an opportunity to comment on the change(s). Any party aggrieved by the Director's action in making a material modification has the right to request a contested case in accordance with Idaho Code § 42-1701A and the provisions and standards set forth in chapter 52, title 67, Idaho Code.

IDWR will provide notice to WD63 water users of future proposed material modifications to the water right accounting to fulfill this stipulation. IDWR interprets "material modification" to be programming code changes to the water right accrual routine. Updates that do not change this routine (e.g., adding water rights, adding diversions, modifying the report, etc.) are not considered "material modifications." IDWR will prepare a technical memo describing future proposed material modifications to water right accounting and post it on the IDWR website. IDWR will also give a presentation describing future proposed material modifications at the WD63 Annual Meeting. IDWR will consider additional outreach surrounding future changes to the water right accounting as requested by WD63 water users.

WD63 water users are encouraged to review future modifications and submit comments to IDWR as needed. IDWR will try to respond to all comments in the form of a letter before implementing future updates into water right accounting.

Stipulation Paragraph 18

Stipulation 18 on page 8 of the stipulated agreement reads as follows:

The Parties stipulate and agree that the Department will update the Water District 63 water right accounting system to account for the distribution of water pursuant to

conditions on water rights authorizing diversions when the Boise River below Lucky Peak Dam is "on flood release."

In fulfillment of this stipulation, IDWR has identified all water rights that it is aware of with conditions related to flood control releases. To accomplish this task, IDWR gueried its water right database to find water rights containing conditions related to flood control releases. The query was designed to exclude shoulder season conditions (see Attachment E). Shoulder season conditions allow a water right to divert water before April 1 or after October 31. Shoulder season conditions usually are not included in water right accounting and instead are regulated directly by the Watermaster. IDWR's query identified fifteen water rights with conditions related to flood control releases. These water rights are summarized in Attachment F. Water rights 63-31869 and 63-149 were not added to the water right accounting because their decreed uses are aesthetic or wildlife. Water rights with non-consumptive uses such as these are usually not included in the water right accounting. Water rights 63-32911 and 63-34334 are recently approved water rights that have not yet been added to water right accounting. When they are added, their elements and conditions will be reviewed and the water right accounting will be updated if necessary to implement the conditions related to flood control releases. Water right 63-20041 was not added to the water right accounting because the condition related to flood control releases is a shoulder season condition. Water right 63-34348 is a recently approved water right permit. When the water user installs the diversion works and begins diverting water, the elements and conditions of the water right will be reviewed and water right accounting will be updated if necessary to implement the conditions related to flood control releases.

Some water rights have a condition requiring watermaster authorization to divert flood control releases. IDWR developed a process for the watermaster to authorize these water rights to fulfill this stipulation. This process included adding a new artificial diversion with the number "15201501" to the IDWR Watermaster Data Entry Software

(https://idwr.idaho.gov/apps/wm/DiversionDataApplication). The Watermaster will enter a "1" in diversion "15201501" for each day of the year that flood control releases are occurring and these water rights are authorized, and a "0" for each day of the year that flood control releases are not occurring. IDWR selected this method because it creates a historical record of the number of days that water rights with flood control diversion conditions that require authorization by the Watermaster diverted water that can be viewed by the public in near-real-time.

In fulfillment of this stipulation, IDWR has developed a method to "flag" water rights in the water right list that have conditions related to flood control releases. The RTS contains multiple fields (see Attachment G) describing different elements of a water right. The "Variable Right Field" is used to "flag" water rights for special calculations in water right accounting. IDWR has added administered water rights with conditions related to flood control releases to the water right list and it has populated the "Variable Right Field" with a number between 900 and 908 to indicate the specific type of flood control condition(s) on the water right.

IDWR added new code to the water right accounting program to implement the specific flood control condition(s) on water rights to fulfill this stipulation (see Attachment C). Programming code was added to the accrual routine that determines if a water right has a value between 900 and 908 in the "Variable Right Field." If the programming code detects a value between 900 and 908, it determines if the specific condition(s) on the water right related to flood control releases have been met. If the condition(s) have been met, the accrual routine accrues natural flow to the water right up to its diversion rate. If not, the water right diversion rate is set to zero cfs for that accounting day.

Staff in IDWR's Hydrology Section tested the updates made to water right accounting to implement the accrual of water to water rights that have conditions related to flood control releases using input data from the 2017 and 2018 water years. For the 2017 water year, implementation of the new code resulted in the "Surprise Valley/Micron" diversion diverting 30 acre-feet more natural flow, and subsequently being charged 30 acre-feet less storage use. This outcome was the result of the incorrect handling of this water right by prior versions of the accounting program. No other water rights with conditions related to flood control releases were affected because they were either not exercised in 2017 or they never came into priority. Similarly, in 2018, no water rights with limiting flood control conditions were affected because, again the water rights were either not exercised, or they never came into priority.

IDWR staff tested the updates related to the administration of water rights with flood control release conditions using input data from the 2018 water year that had artificially increased and decreased flow rates for the river and diversions. The testing results allow IDWR staff to conclude the updated water right accounting is functioning as intended. The new Watermaster authorization procedure allows/limits diversion of natural flow by water rights bearing flood control release limitations. As expected, water users can divert natural flow up to the total diversion rate of their water rights, including water rights with conditions related to flood control releases, but are charged storage for their diversion amounts that exceed their water right diversion limits. Based on its analysis, IDWR staff conclude that the updates do not adversely impact other parts of the water right allocation routine.

Attachment A – Refill 1 Partial Decree

			RECEIVED	
			JUL 2 2 2019	
			DEPARTMENT OF	
IN THE	DISTRICT COURT OF THE FIFTH JU	DICIAL DISTRICT	STRICT COURT - SRBA	
STAT	TE OF IDAHO, IN AND FOR THE CO	UNTY OF TWIN FAL	Fifth Judicial District of Twin Falls - State of I	daho
In Re SRBA)	PARTIAL DECREE P I.R.C.P. 54(B) FOR	URSUANT TO	JUL 1 9 2019	
Case No. 39576)	Water Right 63-33734/	а (Зу		Clerk
NAME AND ADDRESS:	UNITED STATES OF AMERICA A BUREAU OF RECLAMATION REGIONAL DIRECTOR PN CODE 1150 N CURTIS RD STE 100 BOISE ID 83706-1234	CTING THROUGH	/MA:s	Clerk
SOURCE:	BOISE RIVER	TRIBUTA	RY: SNAKE RIVER	
QUANTITY:	3,672,732.00 AFY	2 - 1 - 10		
	Water right nos. 63-33734A, 63-303, are limited to the total combined annu total of 1,044,011 acre-feet of storage storage water.	63-3613, 63-3614, 63- ual diversion volume n water per year to the o	3618, and 63-33734B ecessary to allocate a consumers or users of the	
PRIORITY DATE:	9/30/1965			
	This water right is subordinate to all for uses within the IDWR Administra than 1,000 acre feet of surface water water right shall not be administered licensed for managed ground water re for the storage or use of water for pow	water rights established titve Basin 63, except v permitted or licensed a as subordinate to water echarge after April 15, wer purposes.	l pursuant to Idaho law vater rights to store more fter April 15, 2019. This rights permitted or 2019, or any water rights	
POINT OF				
DIVERSION:	T02N R03E S11 SENE Lot 7 Within	Ada County		
PURPOSES AND	NURBOOK OF USE	REBIOD OF LISE	OUNTER	
PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY	
	IRRIGATION STORAGE	01/01 12/31	3,672,732.00 AFY	
	MUNICIPAL/INDUSTRIAL STORAGE	01/01 12/31	3,672,732.00 AFY	
	STREAMFLOW MAINTENANCE STORAGE	01/01 12/31	3,672,732.00 AFY	
	Water accruing to this water right sup 63-303, 63-3613, 63-3614, and 63-36	plements water accrue	d under water right nos.	

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage end uses as provided in the contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

SRBA – PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) Water Right 63-33734A

PLACE OF USE:

Place of use is on those lands identified under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

- 1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this Partial Decree. However, as a matter of Idaho Constitutional and Statutory law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners en users of the consumers or users of the water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.
- 2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.
- 3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.
- 4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of a final unified decree as it may be amended. Section 42-1412(6), Idaho Code.
- The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective September 13, 2018, which is incorporated herein by reference.
- 6. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.
- Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.
- This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

SRBA - PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) Water Right 63-33734A

RULE 54(b) CERTIFICATION

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with rule 54(b), IR.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. ilaman

Page 3

Presiding Judge of the Snake River Basin Adjudication

SRBA – PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) Water Right 63-33734A

Attachment B – Refill 2 Partial Decree

RECEIVED

IN TH	E DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT DISTRICT COURT - SPRA
ST	ATE OF IDAHO, IN AND FOR THE COUNTY OF TWOODING OF Twin Falls - State of Id
In Re SRBA) PARTIAL DECREE PURSUANT TO JUL 1 9 2019) LR.C.P. 54(B) FOR
Case No. 39576) Water Right 63-33734B
NAME AND ADDRESS	UNITED STATES OF AMERICA ACTING THROUGH BUREAU OF RECLAMATION REGIONAL DIRECTOR PN CODE-3100 1150 N CURTIS RD STE 100 BOISE ID 83706-1234
SOURCE:	BOISE RIVER TRIBUTARY: SNAKE RIVER
QUANTITY:	587,056.00 AFY
	Water right nos. 63-33734B, 63-303, 63-3613, 63-3614, 63-3618, and 63-33734A, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.
	This water right may be exercised only to replace water released for flood control purposes, as determined by the Water District 63 Watermaster, supervised by the Director of the Department of Water Resources. In determining the timing, duration, and magnitude of flood control releases for the purpose of administering this water right and distributing natural flow in accordance with state law, the Watermaster as supervised by the Director will consider, but will not be bound by, the November 20, 1953, "Memorandum of Agreement Between the Department of the Army and the Department of the Interior for Flood Control Operation of Boise River Reservoirs, Idaho" (hereinafter "MOA") and the 1985 "Memorandum of Understanding for Confirmation, Ratification, and Adoption of the Water Control Manual-Boise River Reservoirs, Boise, Idaho" (hereinafter "Manual"). The Watermaster as supervised by the Director may also consider, but will not be bound by, the United States' determinations of the purposes for which water is being released from Lucky Peak Dam. The Watermaster as supervised by the Director deems relevant.
	The Watermaster's determinations, as supervised by the Director, of the timing duration, and magnitude of flood control releases shall not affect or bind the United States' determinations, authority, or discretion under federal law for purposes of operating its reservoirs for flood control purposes in accordance with the 1946 Flood Control Act, 60 Stat 641, as amended or supplemented, and the MOA and Manual as they may be revised pursuant to the forgoing law.
	Water will not accrue towards the satisfaction of this water right until the United States of America, acting through the Bureau of Reclamation, has notified the Water District 63 Watermaster of the calendar date on which it intends to store water pursuant to this water right. Following initial notification, the United States can provide notification directing the Water District 63 Watermaster to stop and start the accrual of water pursuant to this water right, until the water right has been satisfied.

SRBA – PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) Water Right 63-33734B

×.

χ.

specific calendar date on which administrative action should occur. The identified calendar date cannot predate the date of the written notification.

PRIORITY DATE:

3/16/1973

POINT OF DIVERSION:

PURPOSES AND PERIOD OF USE: T02N R03E S11 SENE Lot 7 Within Ada County

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION STORAGE	01/01 7/31	587,056.00 AFY
MUNICIPAL/INDUSTRIAL STORAGE	01/01 7/31	587,056.00 AFY
STREAMFLOW MAINTENANCE STORAGE	01/01 7/31	587,056.00 AFY

Water accruing to this water right supplements water accrued under water right nos. 63-303, 63-3613, 63-3614, 63-3618. Water physically stored in any Boise River Reservoir under this water right on the day of allocation will be allocated for storage end uses as provided in contracts entered into between the United States and federal contractors referenced in paragraph 2 below as if it had accrued under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

PLACE OF USE:

Place of use is on those lands identified under water right nos. 63-303, 63-3613, 63-3614, and 63-3618.

Water accruing under this right may be stored in Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs, so long as the water is tributary to that reservoir, when determined by the United States and the Water District 63 Watermaster as supervised by the Director of the Department of Water Resources that such storage will maximize the storage of water in the three reservoirs.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

- 1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this Partial Decree. However, as a matter of Idaho Constitutional and Statutory law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.
- 2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors; provided, however, in the event flood control operations result in irrigation entities with contracts for space in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs, having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations will come from uncontracted space in Lucky Peak Reservoir used for streamflow maintenance purposes. The Water District 63 Watermaster (as supervised by the Director of the Department of Water Resources) shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation.

SRBA - PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) Water Right 63-33734B

- 3. The storage rights in Lucky Peak Reservoir, which consist of water right nos. 63-3618, 63-33734A, and 63-33734B, are subject to the flood evacuation provisions which supplement irrigation storage contracts held in Anderson Ranch and Arrowrock Reservoirs as defined by supplemental contracts with the Bureau of Reclamation. This acknowledgement relieves the right holder from seeking a temporary change in purpose of use to meet these obligations.
- 4. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as determined by the Court upon entry of a final unified decree as it may be amended. Section 42-1412(6), Idaho Code.
- 5. This water right is subordinate to the following water rights:
 - All surface water rights within IDWR Administrative Basin 63 with a priority date earlier than May 1, 2014, with a decreed or licensed diversion rate of less than 0.1 CFS;
 - b. All water rights listed on attachment A.
- The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective September 13, 2018, which is incorporated herein by reference.
- 7. The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided however, the annual time period will begin (1) day after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.
- Nothing in this water right shall change the legal effect of the condition on certain water rights expressly limiting those water rights to diverting water when the Boise River is on flood release below Lucky Peak.
- This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended.

RULE 54(b) CERTIFICATION

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with rule 54(b), IR.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Windman Presiding Judge of the Snake River Basin Adjudication

SRBA - PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) Water Right 63-33734B

Attachment C – Programming Code Updates

Code Update for Refill 2

BoiseAccountingModel.cs - Approximately Line 206

```
//Set activeRefill2 variable and zero Active Refill2 diversion
var activeRefill2 = diversions[13201505].LaggedFlow > 0.0;
diversions[13201505].LaggedFlow = 0; //cancel value
```

BoiseAccountingModel.cs - Approximately Line 814

```
//Set no Refill2 not authorized and set diversion rate to 0
if (!activeRefill2)
{
wr.TemporaryDiversionRate = 0;
}
```

Code Update For Water Rights with Flood Control Conditions

BoiseAccountingModel.cs - Approximately Line 206

```
//Set activeFlood variable to flood condition and zero Active Flood diversion
var activeFlood = diversions[13201501].LaggedFlow > 0.0;
diversions[13201501].LaggedFlow = 0; //cancel value
```

BoiseAccountingModel.cs - Approximately Line 814

//Flood Control Water Rights - Set temporary water right to zero if conditions are not satisfied. DJS 5/13/2016

```
//Instantiate flow variables required for flood conditional evaluation
var glnwdFlow = reaches.GetReachBySiteID(13210050).ReachInflow; //Glenwood gage. Flow at
Glenwood is the inflow to the Middleton Reach
```

```
var lpFlow = reaches.GetReachBySiteID(13203600).ReachInflow; //Lucky Peak flow is inflow
to the reach ending at 13203600 (Boise River blw Diversion Dam)
```

```
var parmaFlow = reaches.GetReachBySiteID(13213000).MeasuredDischarge; //Boise River at
Parma is reach outflow of reach ending at 13213000 (Boise River at Parma)
var usbrFlow = diversions[13201991].LaggedFlow; //USBR diversion
var idfgFlow = diversions[13201990].LaggedFlow; //IDFG diversion
var nycFlow = diversions[13203000].LaggedFlow; //New York Canal diversion
```

```
//10-31-19: MAnders - update flood condition code
var lpMinusNyc = lpFlow - nycFlow; // Lucky Peak minus New York Canal
//10-31-19: MAnders - end
```

//Evaluate flood control water right conditions with VariableRight indicator
switch (wr.VariableRight)
{

```
case 900:
              if (!activeFlood)
              {
                     //set water rights with flood control 900 = 0
                     wr.TemporaryDiversionRate = 0;
              }
              break;
       case 901:
              if (glnwdFlow < 240)
              {
                     //set water rights with flood control 901 = 0
                     wr.TemporaryDiversionRate = 0;
              break;
       case 902:
              if (usbrFlow + idfgFlow > 0)
              {
                     //set water rights with flood control 902 = 0
                     wr.TemporaryDiversionRate = 0;
              }
              break;
       case 903:
              if (usbrFlow + idfgFlow > 0 && usbrFlow + idfgFlow >= parmaFlow)
              {
                     //set water rights with flood control 903 = 0
                     wr.TemporaryDiversionRate = 0;
              }
              break;
       //10-31-19: MAnders - update flood condition code
       case 904:
              var fcDate4 = isLeap ? 290 : 289; // October 16
              var fcDate5 = isLeap ? 320 : 319; // November 15
              var fcDate6 = isLeap ? 76 : 75; // March 16
              var fcDate7 = isLeap ? 106 : 105; // April 15
              if (laggedDay.DayOfYear >= fcDate4 && laggedDay.DayOfYear <= fcDate5 &&</pre>
lpMinusNyc <= 240)</pre>
              {
                     wr.TemporaryDiversionRate = 0;
              }
              if (laggedDay.DayOfYear >= fcDate6 && laggedDay.DayOfYear <= fcDate7 &&
       lpMinusNyc <= 1100)</pre>
              {
                     wr.TemporaryDiversionRate = 0;
              }
              break;
       //10-31-19: MAnders - end
       case 908:
```

```
//10-31-19: MAnders - update flood condition code
              //var lpMinusNyc = lpFlow - nycFlow; // Lucky Peak minus New York Canal
              //10-31-19: MAnders - end
              var fcDate1 = isLeap ? 61 : 60; //March 1
              var fcDate2 = isLeap ? 122 : 121; //May 31
              var fcDate3 = isLeap ? 168 : 167; //June 16
              if (!activeFlood)
              {
                     wr.TemporaryDiversionRate = 0;
              }
              else
              {
                     if (laggedDay.DayOfYear >= fcDate1 && laggedDay.DayOfYear < fcDate2</pre>
&& lpMinusNyc < 1100) //flood condition 907 and 908)
                     {
                            wr.TemporaryDiversionRate = 0;
                     }
                     if (laggedDay.DayOfYear < fcDate1 && lpMinusNyc < 240 ||</pre>
laggedDay.DayOfYear >= fcDate3 && lpMinusNyc < 240)</pre>
                     {
                            wr.TemporaryDiversionRate = 0;
                     }
              }
              break;
       }
```

8600. 1600. 0. 1172. 7900. 7908. 0. 1172. 7718. 6547. 0. 1172. 7718. 6547. 0. 1172. 7990. 6568. 250. 1172. 8347. 7126. 1172. 1172. 8347. 7368. 250. 1172. 8540. 7368. 0. 1172. 8540. 7368. 0. 1172. 8240. 7368. 0. 1172. 8240. 7368. 0. 1172.	1600. 1600. 1600. 1700. 12329. 9080. 7908. 0. 1172. 12329. 7900. 6547. 0. 1172. 12329. 7900. 6547. 0. 1172. 12544. 7980. 6547. 0. 1172. 12544. 7990. 6568. 1172. 1172. 13342. 8347. 7126. 1172. 1172. 13342. 8347. 7368. 0. 1172. 13342. 8347. 7368. 0. 1172. 13535. 8540. 7368. 0. 1172. 13535. 8540. 7368. 0. 1172. Refill 1 & 2 - Remaining Natural F 0. 1172. 1172.	11. 0. 1600. 20051228 11. 0. 0. 1200. 20051228 0. 1180. 0. 201. 20051228 0. 1180. 1180. 0. 20051228 0. 182. 182. 0. 20051228 0. 182. 182. 0. 20051228 0. 53. 53. 215. 20051228 0. 100. 100. 210. 20051228 0. 231. 231. 332. 20051228 0. 231. 231. 332. 20051228
- BOISE RIVER FLOW ACCOUNTI FLOW NAT FLOW FLOW FLOW NAT FLOW FLOW 4720. 2970. 0. 2830. 2970. 0. 28310. 6509. 0. 1600. 1609. 0. 7718. 1600. 162. 0. 7718. 162. 0. 7718. 162. 0. 7718. 162. 0. 8347. 579. 50. 8347. 579. 0.	NATURAL ACTUAL RMAINING OPERAT FLOW FLOW NAT FLOW FLOM 4720. 4720. 0.0 2970. 2970. 0.0 4421. 2830. 0.0 10930. 8310. 6509. 0. 12329. 9080. 1560. 0. 12329. 7718. 1522. 0. 12329. 7718. 0. 12329. 7718. 1622. 0. 123329. 7718. 1622. 0. 123329. 8347. 579. 0. 1342. 8347. 500. 162. 0. 13535. 8540. 822. 0.	itural Flow is redu
- BOISE RI ACTUAL RI FFLON NU 47200 12830. 2830. 2830. 2830. 1600. 77118. 77118. 77118. 7880. 77900. 77118. 7880. 77118. 8347. 8347. 8540.	NATURAL ACTUAL R FLOW FLOW N 2720. 2720. 2970. 2970. 4421. 2830. 1600. 1600. 12329. 9080. 12329. 7900. 12329. 7718. 12329. 7990. 12344. 7880. 12344. 8347. 12544. 8347. 13345. 8347. 13535. 8540.	
	NATURAL FLOW 4720. 2970. 4421. 10930. 1600. 12329. 12329. 12329. 12329. 12329. 12329. 12329. 12329. 12329. 12329. 12332. 13342. 13342.	
WATER DIS ADT DATE DATE ADT 7 ADT 7		

Attachment D – Example of the Change to Remaining Natural Flow and Stored Flow Caused By Adding Refill 1 & 2 Water Rights to Water Right Accounting

Existing Water Right Accounting

•

Attachment E – Example of a Water Right Shoulder Season Condition

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Watermaster and only when water is being released by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir or Lake Lowell as decreed in SRBA Case No. 39576.

Attachment F - Water Rights with Conditions Related to Flood Control Releases

Water Right	Point of Diversion	Summary of Conditions Related Flood Control Releases	Implemented in Water Right Accounting
63-11439	Trinity Springs	Water right is active with watermaster authorization.	Y
63-12550	Canyon County Canal	Water right is active when flows in Boise River at Glenwood Bridge are greater than 240 cfs.	Y
63-12577	Shakespeare	Water right is active when USBR plus IDFG diversions equal to zero.	Y
63-31869	Ferguson	Water right is active when USBR plus IDFG diversions equal to zero.	N (Aesthetic)
63-32066	Andrews	Water right is active when USBR plus IDFG diversions are less than the flow in the Boise River.	Y
63-32467	Andrews	Water right is active when USBR plus IDFG diversions are less than the flow in the Boise River.	Y
63-32911	Tree Top Ranches	Water right is active when USBR plus IDFG diversions are less than the flow in the Boise River.	N (On Hold)
63-34334	Thorpe	Water right is active when USBR plus IDFG diversions are less than the flow in the Boise River.	N (On Hold)
63-147B	Surprise Valley / Micron	Water right is active from October 16 to November 15 when flow in Bose River is greater than 240 cfs. Water right is active from March 16 to April 15 when flow in Bose River is greater than 1.100 cfs.	Y
63-149	Rossi Mill	Water right is limited to 10 cfs from November 15 to March 1 when the flow in the Boise is less than 240.	N (Wildlife/ aesthetic)
63-20041	Boise City Canal	Water right is limited to 1 cfs and 25 af from March 1 to March 31 and November 1 to November 15 when the flow in the Boise River is less than 240 cfs.	N (Shoulder season)
63-12420	Surprise Valley / Micron	Water right is active from June 16 to February 29 when flow in the Boise River is greater than 240 cfs. Water right is active from March 1 to May 31 when flow in the Boise River is greater than 1,100 cfs Water right is active with watermaster authorization.	Y
63-12399	Surprise Valley / Micron	Water right is active from June 16 to February 29 when flow in the Boise River is greater than 240 cfs. Water right is active from March 1 to May 31 when flow in the Boise River is greater than 1,100 cfs Water right is active with watermaster authorization.	Y
63-31409	Suez	Water right is active from June 16 to February 29 when flow in the Boise River is greater than 240 cfs. Water right is active from March 1 to May 31 when flow in the Boise River is greater than 1,100 cfs Water right is active with watermaster authorization. Water right is active from June 16 to February 29 when	Y
00-04040		flow in the Boise River is greater than 240 cfs.	(On Hold)

Water Right	Point of Diversion	Summary of Conditions Related Flood Control Releases	Implemented in Water Right Accounting
		Water right is active from March 1 to May 31 when flow in the Boise River is greater than 1,100 cfs	
		Water right is active with watermaster authorization.	
		Water Right is active when flow in the Boise River is less than 800 cfs.	

Attachment G –	Table Fields and	Water Right Order i	in the Water Righ	t List Input File

Order	Priority Date	Diversion Rate X 1000 (cfs)	Hydro- logic ID	Variable Right Code	Right Type Code	Volume Limit	Start Day Julian	End Day Julian	Note
75	18650601	840	13211725	0	0	0	60	319	
76	18650601	2382	13203527	904	0	0	60	319	Flood Control Condition
77	18650601	336	13212887	0	0	0	60	319	
				Break in Tal	ble				
374	18650601	210	13211725	0	0	0	60	319	
375	18650601	595	13203527	904	0	0	60	319	Flood Control Condition
376	18650601	84	13212887	0	0	0	60	319	
				Break in Tal	ble				
630	18650601	350	13211725	0	0	0	60	319	
631	18650601	993	13203527	904	0	0	60	319	Flood Control Condition
632	18650601	140	13212887	0	0	0	60	319	
	Break in Table								
934	19861115	560	13212994	0	0	126	60	319	
935	19910222	1000	13189600	900	0	13	0	0	Flood Control Condition
936	19930908	24800	13204200	0	0	0	0	0	
937	19940425	120	13212999	0	0	18	60	319	
938	19970606	3400	13203527	908	0	0	74	319	Flood Control Condition
939	19970606	15000	13203527	908	0	0	0	0	Flood Control Condition
940	19991012	5000	13209990	901	0	0	0	0	Flood Control Condition
941	19991202	110	13203715	902	0	0	0	0	Flood Control Condition
942	20000101	130000000	13194000	0	5	0	0	0	
943	20000102	226886816	13190000	0	6	0	0	0	
944	20000103	133284600	13201500	0	7	0	0	0	
945	20000104	20000000	13190000	0	8	0	0	0	
946	20011116	20000	13204200	908	0	0	0	0	Flood Control Condition

Order	Priority Date	Diversion Rate X 1000 (cfs)	Hydro- logic ID	Variable Right Code	Right Type Code	Volume Limit	Start Day Julian	End Day Julian	Note
947	20041208	20500	13212832	903	0	0	319	74	Flood Control Condition
948	20051228	20000	13212832	903	0 1	81.5	319	60	Flood Control Condition
949	19730316	133284600	13201500	0	10	0	158	191	Refill 2
950	19820708	440	13206274	0	0	49.5	74	319	
951	19850809	450	13199924	0	0 2	2.8	0	0	
952	19860319	5290	13206096	0	0	40.9	0	0	
953	19891102	70	13189600	0	0	13.9	0	0	
954	19650930	133284600	13201500	0	9	0	0	0	Refill 1