



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

May 1, 2013

Richard Murgoitio
Chairman
Boise Project Board of Control
2645 Overland Road
Boise, Idaho 83705-3155

Dear Mr. Murgoitio:

I appreciate the opportunity to respond to the concerns expressed in your letter of April 15, 2013 regarding flood control and "refill" operations in the federal reservoir system in the Boise River Basin ("the Basin 63 reservoirs"). Because of prior commitments, I am unable to attend your Board of Control meeting on May 8. I am working with Al Barker to arrange another time. Your concerns and questions are important. The following is a detailed, written response to your letter.

Before responding to the individual questions in your letter, I will address two issues that are the bases of your concerns. First, are existing flood control and "refill" operations in the Basin 63 reservoirs threatened by the Snake River Basin Adjudication ("SRBA") Court's recent "refill" decision in the Basin-Wide Issue No. 17 proceeding? Second, what are the legal authorities governing flood control operations in the Basin 63 reservoirs?

As discussed below, the SRBA Court's decision in Basin-Wide 17 and the positions taken by the State of Idaho in the SRBA "refill" proceedings are consistent with existing flood control and "refill" operations in the Basin 63 reservoirs and do not in any way threaten those operations. Flood control operations in the Basin 63 reservoirs are authorized by federal law and fall under the authority of the Bureau of Reclamation.

The SRBA Court's Basin-Wide 17 Decision

Your letter states that the SRBA Court's Basin-Wide Issue 17 decision and the State of Idaho's litigation positions in the SRBA "refill" proceedings "places at risk the historic Boise River flood control operations" and "the Districts' ability to put water to use that has historically physically filled the reservoirs following the flood control releases."¹ Your letter also states that, as a result of the Basin-Wide 17 decision and the State's litigation positions, the Board of Control has no choice but to seek a "change in [flood control] operations" that "may have serious downstream implications." As discussed

¹ The "Districts" referenced in your letter are Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, New York Irrigation District, Big Bend Irrigation District, and Wilder Irrigation District.

below, the Basin-Wide 17 decision is consistent with the historic *status quo* and does not threaten or put at risk existing flood control and “refill” operations in the Basin 63 reservoirs. No change in these operations is required.

Basin-Wide 17 was initiated by the Black Canyon Irrigation District, New York Irrigation District, Pioneer Irrigation District, Nampa-Meridian Irrigation District, and the Boise Project Board of Control, requesting that the SRBA Court designate a basin-wide issue concerning the authority to refill space vacated for flood control.² Following a hearing, the Court designated the following issue as Basin-Wide Issue 17: “Does Idaho law require a remark authorizing storage rights to ‘refill,’ under priority, space vacated for flood control.”³

The SRBA Court held in its Basin-Wide 17 decision that a senior storage water right is no longer in priority after it has been satisfied, and the prior appropriation doctrine as established under Idaho law does not allow the “refill” of a senior storage water right before junior water rights are satisfied.⁴ As the Court noted, “flood waters” (which the Bureau of Reclamation captures in the Basin 63 reservoirs to “refill” previously evacuated flood control space) are “excess water,” that is, “water in the system at a given time [that] exceeds the quantity necessary to satisfy existing non-flood rights on the system.”⁵

The Department’s interpretation and administration of the storage water rights for the Basin 63 Reservoirs is and historically has been consistent with these holdings, as confirmed by affidavits filed in the SRBA by the Watermaster for Water District No. 63 and the Department’s Technical Hydrologist.⁶ Rather than threatening the Bureau’s existing flood control and “refill” operations in the Basin 63 reservoirs, the Basin-Wide 17 decision confirmed that those operations may continue.

While your letter implies that the State of Idaho’s arguments in the SRBA proceedings threatened historic flood control and “refill” operations, the State’s “refill” positions (including the State’s proposed remark in the SRBA proceedings on the American Falls and Palisades reservoirs) were consistent with the *status quo* in Basin 63, including existing flood control and “refill” operations.⁷ The fact that the State proposed a “refill” remark for the American Falls and Palisades reservoirs but not for the Basin 63 reservoirs was a response to the unique priority “refill” claims the Bureau asserted for American Falls and Palisades. The Bureau first proposed a storage refill remark in the SRBA proceedings for American Falls and Palisades reservoirs. Moreover, the refill remark the Bureau sought would have changed the historic water right accounting process for Basin 01. As the SRBA Court found, the State “disagreed with the [Bureau’s] proposed storage refill remark” for American Falls and Palisades, and proposed an “alternative” remark.⁸ The Bureau’s proposed remark would have modified the “Quantity” element of the American Falls and Palisades water rights to authorize “the right to refill under the priority date” of the original licenses.⁹ This issue was not raised in Basin 63 because the Bureau did not seek such a remark or authorization for the Basin 63 reservoirs, or for any of its other licensed-based storage water rights in Idaho.¹⁰ The State’s proposed remark was in response to the legal

² *Memorandum Decision, Basin-Wide Issue 17, Subcase No. 00-91017* (Mar. 20, 2013) (“*Memorandum Decision*”), at 2.

³ *Memorandum Decision* at 2.

⁴ *Memorandum Decision* at 7-10.

⁵ *Memorandum Decision* at 12 n.9.

⁶ *Affidavit of Rex R. Barrie, Watermaster, Water District No. 63, and Affidavit of Elizabeth Anne Cresto*, which were filed in SRBA Subcase Nos. 01-2064 (American Falls) and 01-2068 (Palisades) *et al.*, on June 19, 2012 (attached as Attachment A).

⁷ *See id.*

⁸ *Memorandum Decision* at 4-5.

⁹ *Memorandum Decision* at 4-5.

¹⁰ It was not until the Basin-Wide 17 proceedings that the Bureau argued that an Idaho storage water right always includes a right of priority “refill” as a matter of law.

uncertainty the Bureau created by requesting a refill remark. The State's proposed alternative remark reflected actual historical practice.

The Legal Authority Governing Flood Control Operations Of The Basin 63 Reservoirs

The second overarching concern expressed in your letter is the question of the legal authorization for flood control operations in the Basin 63 reservoirs. The SRBA Court declined to address this issue because it concluded the Basin-Wide 17 proceedings did not require a judicial determination of what state or federal law, if any, authorizes the Bureau to release water for flood control that had been "diverted and stored pursuant to a valid storage right," even though the storage water right does not include flood control as a purpose of use.¹¹

While none of the storage water rights for the Basin 63 reservoirs include flood control as a purpose of use, the SRBA established that federal statutes and spaceholder contracts authorize the Bureau to operate the Basin 63 Reservoirs for flood control purposes. The SRBA Court determined that "Congress authorized the construction of Lucky Peak Reservoir 'for the benefit of navigation and the control of destructive flood waters and other purposes.'"¹² In 1953, the Department of the Interior and the Corps of Engineers "entered into a 'Memorandum of Agreement . . . for Flood Control Operations of Boise River Reservoirs, Idaho'" for coordinated operation of the Basin 63 Reservoirs.¹³ Subsequently, the Bureau entered into contracts with the Basin 63 irrigation entities:

Consistent with the MOA, in 1984 the BOR entered into Supplemental Contracts with each of the irrigation entities having storage rights in the upstream reservoirs. Among other things, the Supplemental Contracts confirmed to contract holders the use of storage waters in Lucky Peak for irrigation purposes in an amount equal to the unfilled storage capacity that results from the water having been evacuated from Anderson Ranch and Arrowrock Reservoirs for flood control purposes.¹⁴

The SRBA Court found in the Lucky Peak proceedings that the Corps of Engineers in 1985 adopted a *Water Control Manual for Boise River Reservoirs* providing that if flood control operations "result in irrigation entities having less storage than they would otherwise, then the first 60,000 acre-feet of any shortfalls caused by flood control operations comes from the streamflow maintenance allocation. The system has been administered in this manner since 1985."¹⁵ Pursuant to the *Water Control Manual* and the Supplemental Contracts, "[a]ny shortages beyond the 60,000 acre-feet are allocated proportionately among all the users in Lucky Peak."¹⁶

¹¹ *Memorandum Decision* at 12-13.

¹² *Memorandum Decision And Order On Cross-Motions For Summary Judgment Re: Bureau Of Reclamation Streamflow Maintenance Claim, Subcase No.63-3618 (Lucky Peak Reservoir)* (Sep. 23, 2008) ("*Lucky Peak Order*"), at 5 (quoting Flood Control Act of 1946, 60 Stat. 641, 643, 650 (Jul. 24, 1946)). The United States Supreme Court has held that Section 8 of the 1902 Reclamation Act, 43 U.S.C. § 383, requires the Bureau to comply with "any [State] condition on the control, appropriation, use, or distribution of water" through a federal reclamation project that is not inconsistent with clear congressional directives respecting the project." *San Luis Unit Food Producers v. United States*, 709 F.3d 798, 806 (9th Cir. 2013) (quoting *California v United States*, 438 U.S. 645, 672 (1978)). Thus, if state law restrictions on the Bureau's water use are inconsistent with other federal law, federal law prevails pursuant to Section 8 of the 1902 Reclamation Act (43 U.S.C. § 383). *Id.*

¹³ *Lucky Peak Order* at 5-6 (citation omitted).

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 12.

¹⁶ *Id.* at 34.

In sum, federal law and the contracts between the Bureau and the Basin 63 spaceholders specifically authorize flood control operations in the Basin 63 reservoirs, and also provide for how shortages resulting from flood control operations will be addressed. The fact that the Bureau's storage water rights for the Basin 63 reservoirs do not include flood control as a "purpose of use" does not mean the Bureau lacks authority to continue flood control operations in the Basin 63 reservoirs. Indeed, all of the parties to Basin-Wide 17, including the State of Idaho, acknowledged in briefing that federal law can authorize or require flood control operations even if the Bureau's storage water rights do not specifically authorize "flood control." As the Bureau specifically asserted to the SRBA Court in the Basin-Wide Issue 17 case, "the outcome of this proceeding will have no effect on Reclamation's flood control operations."¹⁷

In sum, based on my own review of the Basin-Wide 17 decision and the State's briefing, my conclusion is that no change is required in existing flood control and "refill" operations in the Basin 63 reservoirs. To the contrary, the SRBA Court's decision confirms the *status quo* and supports the continuation of existing operations. Further, because flood control operations in the Basin 63 reservoirs are primarily a matter of federal law, the Bureau has authority to continue its existing flood control operations in the Basin 63 reservoirs even though the Bureau's storage water rights for the Basin 63 reservoirs do not identify flood control as a purpose of use.

While somewhat lengthy, the foregoing discussion was necessary to address the concerns contained in your letter, and necessary to provide a frame of reference for addressing the eleven individual questions posed therein.

1. How does the Department intend to administer the storage rights in the Boise River now that the Board of Control does not authorize flood control releases of its water?

No change in the Department's existing administration of the Bureau's storage water rights for the Basin 63 reservoirs is necessary or contemplated. The Basin-Wide 17 decision confirmed the *status quo* and does not require any change in flood control operations in the Basin 63 reservoirs. Further, the Bureau made it clear in the Basin-Wide 17 proceedings that there will be no change in existing flood control operations. The Bureau's flood control operations in the Basin 63 reservoirs are authorized and governed by federal law and the Bureau's contracts with the Basin 63 spaceholders. In the contracts, the Basin 63 spaceholders specifically agreed to the existing plan of flood control operations in the Basin 63 reservoirs. The SRBA Court identified but did not address the question of what authority the Board of Control and/or the Districts may have over the Bureau's flood control operations in Basin 63.¹⁸ Because the Bureau's Basin 63 flood control operations use "water that was stored by a storage right holder under state law for some other authorized purpose,"¹⁹ this legal question must be resolved between the legal title holder (the Bureau) and beneficial users (the spaceholders) of the storage water rights.

¹⁷ *The United States' Response Brief On Basin-Wide Issue No. 17* (Jan. 10, 2013), at 5.

¹⁸ "The Court also notes that this basin-wide proceedings does not address claims (contractual, statutory, constitutional or otherwise), if any, a storage right holder or reservoir spaceholder may have against a reservoir operator where the reservoir operator uses water diverted and stored by that storage right holder or spaceholder for flood control purposes." *Memorandum Decision* at 11 n.8.

¹⁹ *Memorandum Decision* at 7-8.

2. Is it necessary for the storage rights 63-33737; 63-33738(?) to have a flood control purpose of use before any water can be released for flood control? If so, how will that be accomplished?

Storage water right claims 63-33737 and 63-33738 are beneficial use claims for the Bureau's reservoirs at Arrowrock and Anderson Ranch that Basin 63 spaceholders seek to file in the SRBA. The SRBA Court has not yet ruled on the Basin 63 spaceholders' motion for leave to file these late claims.²⁰ Even if the Court allows the claims to go forward and they are eventually decreed, it would not be necessary for the partial decrees to include flood control as a purpose of use. As discussed above, federal law and contracts authorize flood control operations in the Basin 63 Reservoirs even if the storage water rights for the Bureau's reservoirs do not include flood control as a "purpose of use."

3. Is there any authority for any flood control releases in the Boise, after the SRBA Court's decision?

Yes. As discussed above, federal law and the Bureau's storage contracts authorize flood control operations in the Basin 63 reservoirs.

4. Does the Department agree that there is no authority for flood control in Idaho law?

No. Idaho Supreme Court decisions have also recognized flood control in the context of tort liability. *See, e.g., Burgess v. Salmon River Canal Co., Ltd.*, 119 Idaho 299, 805 P.2d 1223 (1991).

5. What steps will the Department take to provide flood protection downstream without flood control releases on the Boise? Has the Department consulted with the Corps of Engineers over the State's position that flood control may be a waste of water?

As previously discussed, the Bureau has stated that there will be no change in existing flood control operations. The Department has not consulted with the Corps of Engineers because the State did not take the position that flood control is a "waste of water." The State's position was the same as that of the other parties to the SRBA proceedings: while flood control operations are not authorized by the Bureau's storage water rights, they may be authorized by other state or federal law. This does not mean that water cannot be released for flood control.

6. How do you intend to define "fill" of the storage rights in the Boise?

The Department's definition of the "fill" of the Bureau's storage water rights for the Basin 63 reservoirs is and has been consistent with the SRBA Court's Basin-Wide 17 decision. The SRBA Court observed that a storage water right is "filled" when "the decreed volume [has been] satisfied (i.e., when the total quantity that has been accounted to storage equals the decreed quantity)."²¹ The SRBA Court also observed that, as a result of the Bureau's operation of multiple reservoirs in a single basin as a "unified system," the administrative "fill" of the storage water right for an individual reservoir may or may not coincide with the physical filling of that reservoir.²² These principles are consistent with the Department's existing administration of the Bureau's storage water rights for the Basin 63 reservoirs,

²⁰ The hearing on the Basin 63 spaceholders' motions for leave to file the late claims is set for hearing on May 21, 2013.

²¹ *Memorandum Decision* at 9; *see also Affidavit of Rex R. Barrie, Watermaster, Water District No. 63; Affidavit of Elizabeth Anne Cresto.*

²² *Memorandum Decision* at 9.

and with the Bureau's existing operations, under which the Basin 63 reservoirs are operated as a "unified system."²³

a. Does "fill" include pass-through flood water when inflow equals outflow?

The phrase "pass-through flood water" is not a phrase used by the Department in water administration. However, believe I understand your question and will answer accordingly. The Bureau's flood control releases sometimes result in the "outflow" from a reservoir being equal to the "inflow" for a period of time. While one may refer to water as being "passed through" an on-stream reservoir, what actually occurs is that the Bureau adjusts its releases from the reservoir to match the inflow. The fact that the Bureau has adjusted its releases from a reservoir to match inflow does not mean that the water released from the reservoir during such a period was simply "passed through" without being physically diverted and controlled by the Bureau. As the SRBA Court has observed, at Lucky Peak "the entire flow of the natural stream has been diverted and stored and becomes subject to controlled releases."²⁴ Thus, for purposes of determining when the Bureau's Basin 63 storage water rights "fill" or are satisfied, any period when the Bureau's reservoir operations result in the "outflow" from a reservoir being equal to the "inflow" are no different from periods when the Bureau's releases are either greater than or less than "inflow." The Bureau's releases from a reservoir do not enter into the determination of when the storage water right "fills" in any of these circumstances, for the reasons discussed in my response to the next question.

b. Does "fill" include water that is stored and then released for flood water?

Under the Department's existing administration of the storage water rights for the Basin 63 reservoirs, releases of stored water from a reservoir (whether for irrigation, flood control, or other purposes) are not considered in determining when the reservoir's storage water right has "filled" (been satisfied). Stored water releases from the Basin 63 reservoirs (whether for irrigation, flood control, or other purposes) are controlled by the Bureau of Reclamation, and are distributed and accounted for under contractual allocations and instructions established by the Bureau. In short, as the SRBA Court recognized, the Bureau's flood control operations create a "conflict": the Bureau's storage water rights do not authorize "flood control" and when the Bureau "uses stored water for flood control purposes in such a reservoir [it] is using water that was stored by a storage water right holder under state law for some other authorized purpose."²⁵ The Bureau and the Basin 63 spaceholders addressed this conflict through the flood control provisions of the spaceholder contracts.

7. What is the rationale for defining "fill" as you have, and is there any rule, regulation, or written decision explaining this rationale?

Under the Department's existing interpretation and administration of the storage water rights for the Basin 63 reservoirs, a storage water right is "filled" when the decreed volume of the right has been satisfied. The SRBA Court's Basin-Wide 17 decision confirmed this definition in explaining the difference between the physical "fill" of a reservoir *vis-à-vis* the "fill" of a storage water right:

The Court notes that the term "fill" may be used to describe (1) a reservoir physically filling with water, or (2) the decreed volume of a storage water right being satisfied (i.e. when the total quantity that

²³ *Memorandum Decision* at 9.

²⁴ *Lucky Peak Order*, at 22; *see also id.* at 19 ("the entire flow of [the] river is diverted and then artificially released.").

²⁵ *Memorandum Decision* at 7-8.

has been accounted to storage equals the decreed quantity). The distinction between the two uses of the term is significant, as there may be situations where the storage water rights associated with a particular reservoir are considered filled or satisfied even though the reservoir has not physically filled with water. . . . For the purposes of this opinion, the term “fill” or “filled” is used to describe the decreed volume of a storage water rights being satisfied.²⁶

As the Court also observed, “[a]n on-stream reservoir alters the stream affecting the administration of all rights on the source. Accordingly, some methodology is required to implement priority administration of affected rights.”²⁷ “[T]he Department utilizes an accounting methodology for the purpose of determining when a storage water right has been ‘filled.’”²⁸ The determination of when a storage water right “fills” for any particular reservoir is an individualized factual determination, and may also depend upon unique aspects of the storage water right or other affected rights in the same basin.²⁹

8. Do you intend to enforce the provisions of the Boise River water rights allowing them to be diverted only during flood control releases?

I assume that you are referring to the condition in water right no. 63-31409 (United Water) which provides in part, “The right holder shall exercise this right only when authorized by the District 63 watermaster when the Boise River is on flood release below Lucky Peak dam/outlet.” The Department intends to continue administering water rights in Basin 63 consistent with their elements and applicable Idaho law, including any remarks, conditions, or provisions in the water rights that limit diversions under those water rights.

9. Do you intend to include that same remark requiring diversion only during flood control releases in future applications?

The conditions in the United Water water right were negotiated between the water right applicant and other Boise River water users. While the Department cannot prejudge a new water right application that has yet to be filed, I expect that the negotiated language will serve as a model for future applications in the Boise River Basin.

10. What is the basis for proposing subordination to future uses for fill after flood control?

The Department has not proposed subordination to future uses in connection with “refill” of the Basin 63 reservoirs following flood control. Consistent with the SRBA Court’s decision, the Department has administered the storage water rights for the Basin 63 reservoirs under their priorities until the rights have been satisfied. “As soon as a senior right is filled it is no longer in priority.”³⁰ There is no priority associated with “refill” using “flood water,” which is by definition “excess” or “water in the system at a given time [that exceeds] the quantity necessary to satisfy existing non-flood

²⁶ *Memorandum Decision* at 9.

²⁷ *Order Designating Basin-Wide Issue, Basin-Wide Issue 17, Subcase No. 00-91017* (Sep. 21, 2012) (“*Order*”), at 6.

²⁸ *Memorandum Decision* at 9 n.6.

²⁹ “Addressing the issue of reservoir fill may require factual inquiries, investigation and record development specific to a given reservoir, including how the State accounts for fill in each individual reservoir under its accounting program.” *Order* at 6. “In the *Order* designating the basin-wide issue this Court determined that the Department’s accounting methodology is an administrative function which should be addressed on a case-by-case basis on a fully developed factual record and where the Department is a party to the proceeding.” *Memorandum Decision* at 9 n.6.

³⁰ *Memorandum Decision* at 10.

rights.”³¹ Further, while the State’s proposed remark in the SRBA “refill” proceedings for the American Falls and Palisades reservoirs would have made “refill” in excess of the decreed quantity “subordinate” to future uses, that remark was intended only as an “alternative” to the unique priority “refill” remarks the Bureau sought in those subcases.³² The Bureau has since withdrawn those unique claims, and the Basin-Wide 17 decision established that a remark such as those sought by the Bureau in the American Falls and Palisades subcases “would be contrary to Idaho law.”³³ The real issue raised by the competing remarks proposed in the American Falls and Palisades proceedings – the question of “the ability of a storage water right holder to refill, under priority, water diverted and stored pursuant to a valid storage water right but which was used by the reservoir operator for flood control purposes”³⁴ – has been resolved.

11. Has the Department analyzed the impact of its proposal to make “refill” water available to future users or the existing storage accounts for stream flow maintenance and for flow augmentation?

As discussed above, the Basin-Wide 17 decision confirmed the *status quo* and does not require any change in storage water rights administration or reservoir operations in Basin 63. The Department intends to continue existing storage water rights administration in Basin 63, under which the Bureau is allowed to capture “flood water” or “excess waters” to “refill” or replace water released by the Bureau for flood control purposes, even after the storage water rights have “filled” and are no longer in priority. As the Basin-Wide 17 decision confirmed, Idaho law governs the extent to which such “flood waters” or “excess waters” may be available for other or future uses, and the Department has made no proposals in this regard.

Sincerely,



GARY SPACKMAN

Director

³¹ Memorandum Decision at 12 n.9.

³² Memorandum Decision at 4.

³³ Memorandum Decision at 13.

³⁴ Memorandum Decision at 4-5.

ATTACHMENT A

1. I am over the age of eighteen and the facts stated below are based on my personal knowledge.

2. I have been employed by the Idaho Department of Water Resources (“Department”) as a surface water hydrologist since 2004. My current position is Technical Hydrologist. My job responsibilities include running the water rights accounting program and the storage allocations program for the Boise River system and also the water rights accounting program and the storage allocations program for the Payette River system. I have been responsible for running these programs since 2005.

3. I have reviewed the *State Of Idaho's Motion For Partial Summary Judgment* which was filed on January 25, 2012, in the SRBA proceedings for the water rights for American Falls Reservoir (subcase no. 01-2068) and Palisades Reservoir (subcase no. 01-2068). The “refill” remark that the State of Idaho proposed in that motion is consistent with how the water rights for the federal reservoirs in the Boise River system and the Payette River system have been accounted for under the accounting programs for both of those systems during the entire period I have been responsible for running those programs.

4. I have reviewed the “Affidavit of Robert J. Sutter” which was filed in SRBA Subcase No. 63-3618 on February 12, 2008, and the description of the water rights and storage accounting programs therein is consistent with the current accounting for the Boise River system and the Payette River system.

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Further your affiant sayeth naught.

DATED this 18th day of June 2012.

Elizabeth A Cresto
ELIZABETH ANNE CRESTO

SUBSCRIBED AND SWORN to before me this 18th day of June 2012.



Danni M Smith
Notary Public for Idaho
Residing at: BOISE ID
My commission expires: Dec 12, 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19TH day of June 2012, I caused the foregoing AFFIDAVIT OF ELIZABETH ANNE CRESTO to be filed with the Court and true and correct copies served on the following parties by the methods indicated:

1. Original to:

Clerk Of The District Court Snake River Basin Adjudication 253 Third Avenue North PO Box 2707 Twin Falls, ID 83303-2707	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: (208) 736-2121 Phone: (208) 736-3011
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2. Copies to:

Special Master Terrence A. Dolan Case Administrator Diana Delaney Snake River Basin Adjudication 253 Third Avenue North PO Box 2707 Twin Falls, ID 83303-2707	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: (208) 736-2121 <input checked="" type="checkbox"/> E-Mail: tdolan@id.courts.net <input checked="" type="checkbox"/> E-Mail: ddelaney@id.courts.net Phone: (208) 736-3011
James C. Tucker Idaho Power Co 1221 W. Idaho St. P.O. Box 70 Boise, ID 83707	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> E-Mail: JTucker@idahopower.com Phone: 388-2112
Adam DeVoe Brownstein, Hyatt, Farber, Schreck 410 17th Street, Suite 2200 Denver, CO 80202	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> E-Mail: adevoe@bhfs.com

<p>C. Thomas Arkoosh 301 Main St P.O. Box 32 Gooding, ID 83330</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> E-Mail: tarkoosh@capitolawgroup.com Phone: (208) 934-8872</p>
<p>Roger D Ling 615 H St P.O. Box 396 Rupert, ID 83350-0396</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> E-Mail: rdl@idlawfirm.com Phone: (208) 436-4717</p>
<p>Candice McHugh Racine, Olson, Nye, Budge & Bailey, Chtd. 101 Capitol Blvd., Ste. 300 Boise, ID 83702</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: cmm@racinelaw.net Phone: 395-0011</p>
<p>Randall C. Budge 221 E. Center, Ste. A2 P.O. Box 1391 Pocatello, ID 83204-1391</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: rcb@racinelaw.net Phone: (208) 232-6101</p>
<p>Travis L Thompson 113 Main Ave W., Ste 303 P.O. Box 485 Twin Falls, ID 83303-0485</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: tlt@idahowaters.com Phone: (208) 733-0700</p>
<p>Paul L. Arrington 113 Main Ave. W., Ste 303 P.O. Box 485</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority</p>

Twin Falls, ID 83303-0485	Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: pla@idahowaters.com Phone: (208) 733-0700
John K. Simpson 1010 W. Jefferson, Ste 102 P.O. Box 2139 Boise, ID 83701-2139	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: jks@idahowaters.com Phone: 336-0700
W. Kent Fletcher Fletcher Law Office 1200 Overland Ave P.O. Box 248 Burley, ID 83318	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: wkf@pmt.org Phone: (208) 678-3250
David Gehlert US Department Of Justice 999 18 th Street, South Terrace, Ste. 370 Denver, CO 80202	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: david.gehlert@usdoj.gov Phone: (303) 844-1386
USDI Bureau Of Reclamation Represented By: US Department Of Justice Environment & Nat'l Resources 550 West Fort Street, MSC O33 Boise, ID 83724	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail:
United States Of America Regional Director Pn Region Bureau Of Reclamation Pn-3100 1150 N Curtis Rd Ste 100 Boise, ID 83706-1234	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: mhoward@usbr.gov

<p>American Falls Reservoir Represented by: Craig D. Hobdey 125 5th Ave. P.O. Box 176 Gooding, ID 83330</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: hobdeycraig@gmail.com <input type="checkbox"/> Statehouse Mail Phone: (208) 934-4429</p>
<p>American Falls Spaceholders New Sweden Irrigation Dist. Represented by: Jerry R. Rigby 25 N. 2nd E. P.O. Box 250 Rexburg, ID 83440-0250</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail: <input type="checkbox"/> Statehouse Mail Phone: (208) 356-3633</p>
<p>Josephine P. Beeman Beeman & Associates, P.C. 409 W Jefferson St Boise, ID 83702</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: jo.beeman@beemanlaw.com Phone: 331-0950</p>
<p>State Of Idaho Represented By: Natural Resources Div. Chief State Of Idaho Attorney General's Office P.O. Box 44449 Boise, ID 83711-4449</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail: <input checked="" type="checkbox"/> Not applicable</p>
<p>IDWR Document Depository P.O. Box 83720 Boise, ID 83720-0098</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail: <input checked="" type="checkbox"/> Statehouse Mail</p>
<p>Scott L. Campbell 101 S. Capitol Blvd. 10th Fl.</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery</p>

<p>P.O. Box 829 Boise, ID 83701-0829</p>	<p><input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: slc@moffatt.com <input type="checkbox"/> Statehouse Mail Phone: 345-2000</p>
<p>Charles F. McDevitt 420 W. Bannock St. P.O. Box 2564 Boise, ID 83701-0829</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail: chas@mcdevitt- miller.com <input type="checkbox"/> Statehouse Mail Phone: 343-7500</p>
<p>Albert P. Baker Shelly Davis 1010 W. Jefferson, Ste. 102 P.O. Box 2139 Boise, ID 83701-2139</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail: apb@idahowaters.com <input type="checkbox"/> Statehouse Mail Phone: 336-0700</p>



Olga L. Valdivia
Legal Assistant

ATTACHMENT A

01-02064
01-02064A
01-02064E
01-02064F
01-02064L
01-10042
01-10042A
01-10042B
01-10053A
01-10190
(American Falls Subcases)

01-02068
01-02068D
01-02068E
01-02068F
01-02068M
01-02068Y
01-10043
01-10043A
01-10043E
01-10191
01-10389
(Palisades Subcases)

1. I am over the age of eighteen and the facts stated below are based on my personal knowledge.

2. I am employed by Water District No. 63. I have been appointed by the Director, Idaho Department of Water Resources as Watermaster for Water District No. 63, which includes Basin 63 and the Boise River. I have been the Watermaster for Water District No. 63 since 2008.

3. As Watermaster for Water District No. 63, I am responsible for administering the water rights on the Boise River system, including the water rights for the federal reservoirs at Anderson Ranch, Arrowrock, and Lucky Peak.

4. As I understand and administer the water rights for the federal reservoirs in Water District No. 63, those water rights are limited to the annual volume decreed by the SRBA District Court, and they are no longer in priority after the quantities of water diverted into the reservoirs under their water rights reaches the annual volumes decreed by the Court. Additional water may be and often is stored in the reservoirs after the annual volume has been reached, but only if all other water rights have also been filled.

5. I have reviewed the *State Of Idaho's Motion For Partial Summary Judgment* which was filed on January 25, 2012, in the SRBA proceedings for the water rights for American Falls Reservoir (subcase no. 01-2068) and Palisades Reservoir (subcase no. 01-2068). The "refill" remark that the State of Idaho proposed in that motion is consistent with how the water rights for the federal reservoirs in Water District No. 63 have been administered during my tenure as Watermaster.

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///

Further your affiant sayeth naught.

DATED this 18 day of June 2012.

Rex R. Barrie
REX R. BARRIE

SUBSCRIBED AND SWORN to before me this 18th day of June 2012.



Carolyn Longhuest
Notary Public for Idaho
Residing at: Blaine County
My commission expires: 9/1/17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19TH day of June 2012, I caused the foregoing AFFIDAVIT OF REX R. BARRIE, WATERMASTER, WATER DISTRICT NO. 63 to be filed with the Court and true and correct copies served on the following parties by the methods indicated:

1. Original to:

Clerk Of The District Court Snake River Basin Adjudication 253 Third Avenue North PO Box 2707 Twin Falls, ID 83303-2707	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: (208) 736-2121 Phone: (208) 736-3011
---	---

2. Copies to:

Special Master Terrence A. Dolan Case Administrator Diana Delaney Snake River Basin Adjudication 253 Third Avenue North PO Box 2707 Twin Falls, ID 83303-2707	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: (208) 736-2121 <input checked="" type="checkbox"/> E-Mail: tdolan@id.courts.net <input checked="" type="checkbox"/> E-Mail: ddelaney@id.courts.net Phone: (208) 736-3011
James C. Tucker Idaho Power Co 1221 W. Idaho St. P.O. Box 70 Boise, ID 83707	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> E-Mail: JTucker@idahopower.com Phone: 388-2112
Adam DeVoe Brownstein, Hyatt, Farber, Schreck 410 17th Street, Suite 2200 Denver, CO 80202	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> E-Mail: adevoe@bhfs.com

<p>C. Thomas Arkoosh 301 Main St P.O. Box 32 Gooding, ID 83330</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> E-Mail: tarkoosh@capitollawgroup.com Phone: (208) 934-8872</p>
<p>Roger D Ling 615 H St P.O. Box 396 Rupert, ID 83350-0396</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> E-Mail: rdl@idlawfirm.com Phone: (208) 436-4717</p>
<p>Candice McHugh Racine, Olson, Nye, Budge & Bailey, Chtd. 101 Capitol Blvd., Ste. 300 Boise, ID 83702</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: cmm@racinelaw.net Phone: 395-0011</p>
<p>Randall C. Budge 221 E. Center, Ste. A2 P.O. Box 1391 Pocatello, ID 83204-1391</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: rcb@racinelaw.net Phone: (208) 232-6101</p>
<p>Travis L Thompson 113 Main Ave W., Ste 303 P.O. Box 485 Twin Falls, ID 83303-0485</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: tlt@idahowaters.com Phone: (208) 733-0700</p>
<p>Paul L. Arrington 113 Main Ave. W., Ste 303</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery</p>

<p>P.O. Box 485 Twin Falls, ID 83303-0485</p>	<p><input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: pla@idahowaters.com Phone: (208) 733-0700</p>
<p>John K. Simpson 1010 W. Jefferson, Ste 102 P.O. Box 2139 Boise, ID 83701-2139</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: jks@idahowaters.com Phone: 336-0700</p>
<p>W. Kent Fletcher Fletcher Law Office 1200 Overland Ave P.O. Box 248 Burley, ID 83318</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: wkf@pmt.org Phone: (208) 678-3250</p>
<p>David Gehlert US Department Of Justice 999 18th Street, South Terrace, Ste. 370 Denver, CO 80202</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: david.gehlert@usdoj.gov Phone: (303) 844-1386</p>
<p>USDI Bureau Of Reclamation Represented By: US Department Of Justice Environment & Nat'I Resources 550 West Fort Street, MSC O33 Boise, ID 83724</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail: _____</p>
<p>United States Of America Regional Director Pn Region Bureau Of Reclamation Pn-3100 1150 N Curtis Rd Ste 100 Boise, ID 83706-1234</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____</p>

	<input checked="" type="checkbox"/> E-Mail: mhoward@usbr.gov
American Falls Reservoir Represented by: Craig D. Hobdey 125 5 th Ave. P.O. Box 176 Gooding, ID 83330	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: hobdeycraig@gmail.com <input type="checkbox"/> Statehouse Mail Phone: (208) 934-4429
American Falls Spaceholders New Sweden Irrigation Dist. Represented by: Jerry R. Rigby 25 N. 2 nd E. P.O. Box 250 Rexburg, ID 83440-0250	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail: <input type="checkbox"/> Statehouse Mail Phone: (208) 356-3633
Josephine P. Beeman Beeman & Associates, P.C. 409 W Jefferson St Boise, ID 83702	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: jo.beeman@beemanlaw.com Phone: 331-0950
State Of Idaho Represented By: Natural Resources Div. Chief State Of Idaho Attorney General's Office P.O. Box 44449 Boise, ID 83711-4449	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail: <input checked="" type="checkbox"/> Not applicable
IDWR Document Depository P.O. Box 83720 Boise, ID 83720-0098	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail: <input checked="" type="checkbox"/> Statehouse Mail
Scott L. Campbell	<input type="checkbox"/> U.S. Mail, Postage Prepaid

<p>101 S. Capitol Blvd. 10th Fl. P.O. Box 829 Boise, ID 83701-0829</p>	<p><input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> E-Mail: slc@moffatt.com <input type="checkbox"/> Statehouse Mail Phone: 345-2000</p>
<p>Charles F. McDevitt 420 W. Bannock St. P.O. Box 2564 Boise, ID 83701-0829</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail: chas@mcdevitt- miller.com <input type="checkbox"/> Statehouse Mail Phone: 343-7500</p>
<p>Albert P. Baker Shelly Davis 1010 W. Jefferson, Ste. 102 P.O. Box 2139 Boise, ID 83701-2139</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express Priority Overnight <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> E-Mail: apb@idahowaters.com <input type="checkbox"/> Statehouse Mail Phone: 336-0700</p>



Olga L. Valdivia
Legal Assistant

ATTACHMENT A

01-02064

01-02064A

01-02064E

01-02064F

01-02064L

01-10042

01-10042A

01-10042B

01-10053A

01-10190

(American Falls Subcases)

01-02068

01-02068D

01-02068E

01-02068F

01-02068M

01-02068Y

01-10043

01-10043A

01-10043E

01-10191

01-10389

(Palisades Subcases)