

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BALLENTYNE DITCH COMPANY; BOISE)	Case No. CV-WA-2015-21376
VALLEY IRRIGATION DITCH COMPANY;)	(Consolidated Ada County Case
CANYON COUNTY WATER COMPANY;)	No. CV-WA-2015-21391)
EUREKA WATER COMPANY; FARMERS')	
CO-OPERATIVE DITCH COMPANY;)	ORDER VACATING ORDERS
MIDDLETON MILL DITCH COMPANY;)	AND REMANDING TO THE
MIDDLETON IRRIGATION ASSOCIATION,)	IDAHO DEPARTMENT OF
INC.; NAMPA & MERIDIAN IRRIGATION)	WATER RESOURCES (With
DISTRICT; NEW DRY CREEK DITCH)	Corrected Certificate of Mailing)
COMPANY; PIONEER DITCH COMPANY;)	
PIONEER IRRIGATION DISTRICT;)	
SETTLERS IRRIGATION DISTRICT; SOUTH)	
BOISE WATER COMPANY; and THURMAN)	
MILL DITCH COMPANY,)	
)	
Petitioners,)	
)	
vs.)	
)	
BOISE PROJECT BOARD OF CONTROL, and)	
NEW YORK IRRIGATION DISTRICT,)	
)	
Petitioners,)	
)	
vs.)	
)	
THE IDAHO DEPARTMENT OF WATER)	
RESOURCES and GARY SPACKMAN in his)	
capacity as Director of the Idaho Department of)	
Water Resources,)	
)	
Respondents,)	
)	
and)	

SUEZ WATER IDAHO INC.,		
Intervenor.		
IN THE MATTER OF ACCOUNTING FOR DISTRIBUTION OF WATER TO THE		
FEDERAL ON-STREAM RESERVOIRS IN WATER DISTRICT 63		

On October 20, 2015, the Director of the Idaho Department of Water Resources issued an *Amended Final Order* concerning his method of distributing water to federal on-stream reservoirs located in the Boise River System. Several parties sought judicial review of the *Amended Final Order*. On September 1, 2016, the Court entered its *Memorandum Decision and Order* affirming in part and setting aside and remanded in part the *Amended Final Order*. On November 14, 2016, the Court entered an *Order Denying Rehearing*. *Notices of Appeal* were subsequently filed by several parties. The appeals are currently pending under Idaho Supreme Court docket numbers 44677-2016, 44745-2017, and 44746-2017.

In 2018, the parties entered into a stipulated settlement. The purpose of the settlement is to:

[F]acilitate and expedite resolution of all disputes among the Parties that have arisen in various judicial and administrative proceedings pertaining to the issues of the "fill" and/or "refill" of the storage water rights for on-stream reservoirs in Idaho Department of Water Resources . . . Administrative Basin 63, known as Arrowrock, Anderson Ranch and Lucky Peak Reservoirs . . ., including but not limited to: SRBA subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; and the administrative and judicial proceedings underlying these same appeals and cross-appeals.

Stipulation, p.1.1

¹ A copy of the Stipulation is attached as Exhibit 1 to the State of Idaho's Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and 63-3618.

The settlement anticipates the parties thereto supporting certain legislative and judicial actions. In the legislative arena, the parties agreed to jointly support passage of legislation pertaining to new or proposed projects to store more than one thousand acre feet of surface water. That legislation, which is now codified as Idaho Code § 42-115, was passed and made effective as of February 13, 2019.

In the judicial arena, the parties agreed to jointly support the filing of the following Motions with the SRBA District Court: (1) Motion to Decree Water Right No. 63-33734A; (2) Motion to Decree Water Right No. 63-33734B and Disallow Water Right Claim Nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; and (3) Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and 63-3618. The State of Idaho filed the Motions on February 19, 2019. The Court entered Orders granting the Motions on July 19, 2019. No notices of appeal from these Orders were filed and the time for doing so has expired.

The parties also agreed to file a *Joint Motion to Dismiss Appeal* in Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017. The *Joint Motions* were filed on July 29, 2019, and request that the Idaho Supreme Court dismiss the appeals with instructions to the district court to vacate its *Memorandum Decision and Order* and *Order Denying Rehearing*. On August 23, 2019, the Idaho Supreme Court entered its *Order Re: Joint Motion to Dismiss Appeal*. The Court informed the parties that there is no rule allowing it to vacate a judgment of a trial court pursuant to stipulation of the parties. It ordered that the matter be remanded to this Court "for further proceedings in accordance with applicable legislation and stipulation of the parties."

On September 17, 2019, the Court gave notice that it was its intent pursuant to stipulation of the parties to (1) enter an *Order* vacating its *Memorandum Decision and Order* dated September 1, 2016, and its *Order Denying Rehearing* dated November 14, 2016, and (2) remand this matter to the Idaho Department of Water Resources for further proceedings, if any, as may be necessary. Any party wishing to object to the Court's intended action was required to file a written objection with the Court on or before October 15, 2019. No written objections were filed and the time for doing so has expired.

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE **HEREBY ORDERED:**

- 1. The Court's Memorandum Decision and Order dated September 1, 2016, and its Order Denying Rehearing dated November 14, 2016, are hereby vacated.
- The matter is remanded to the Idaho Department of Water Resources for further proceedings, if any, as may be necessary.

IT IS SO ORDERED.

Dated 4 21, 2119

District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER VACATING ORDERS AND REMANDING TO IDWR (WITH CORRECTED CERTIFICATE OF MAILING) was mailed on October 22, 2019, with sufficient first-class postage to the following:

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