

## **REFILL STIPULATION/SETTLEMENT**

**(Status as of August 2019)**

**Settlement of the Refill Issue is Complete.** Following additional contested hearings over the past several months before the Snake River Basin Adjudication (SRBA) Court, on July 19, 2019, SRBA Judge Eric Wildman granted the pending motions approving of the Refill 1 and Refill 2 water rights and completing the final steps of the Stipulation/Settlement of what has been known as the “Refill Issue.” Judge Wildman’s orders resulted in new decreed water rights providing for the fill and refill of the Boise River Reservoirs (Lucky Peak, Arrowrock and Anderson Ranch Reservoirs) during and following flood control releases. Judge Wildman’s orders also provided for certain remarks/conditions to be added to the existing storage water rights for the Boise River Reservoirs to provide uniformity and consistency with the new refill water rights. These decrees and orders are the final component of the Stipulation/Settlement that was reached between Nampa & Meridian Irrigation District (hereinafter “District”), other irrigation entities in the Treasure Valley, the State of Idaho, Idaho Department of Water Resources (IDWR), Suez Water and the Bureau of Reclamation in June of 2018 to resolve the Refill Issue. Now that Judge Wildman has issued these orders and decreed the new refill water rights the parties to the Stipulation/Settlement have filed a Stipulation with the Idaho Supreme Court asking the Court to dismiss the pending appeals and putting an end to the litigation which has lasted more than six years.

**Background of the “Refill Issue” and Settlement.** After several years of lawsuits before the SRBA Court and the IDWR concerning what has been characterized as the “Refill Issue”, a Stipulation/Settlement was reached between the District, other irrigation entities in the Treasure Valley, the State of Idaho, IDWR, Suez Water and the Bureau of Reclamation in June of 2018. The Stipulation was a compromise between the District and the other parties to preserve IDWR’s accounting for the Boise River Reservoirs (Lucky Peak, Arrowrock and Anderson Ranch Reservoirs) during and following flood control releases and to also preserve the historic practices of physically filling the Boise River Reservoirs following flood control releases with decreed water rights. The District has storage rights in Arrowrock and Anderson Ranch Reservoirs, relies on the water stored in the reservoirs for the delivery of water to its landowners, and thus maintaining the historic practices with secure, decreed water rights was critical aspect of the Stipulation for the District.

**Stipulation Components.** The Stipulation included several parts or components, including the following three components which needed to take place in the following order in order to complete the Stipulation and resolve the “Refill Issue”: 1) the stay of the appeals pending before the Idaho Supreme Court to allow additional time for the other aspects of the Stipulation to be completed; 2) the passage of new Legislation concerning the subordination of new storage projects to the refill of the Boise River Reservoirs following flood control releases in order for such subordination to be specifically included in the decreed water rights; and 3) the

issuance of two decreed water rights by the SRBA Court to provide water rights consistent with IDWR's accounting of flood control releases and to provide water rights for the historic, physically filling of the Boise River Reservoirs during and following flood control releases.

The first component of the Stipulation referenced above was completed at the time of signing the Stipulation by filing a motion with the Idaho Supreme Court staying the pending appeals until November of 2019 in order to get the other components of the Stipulation completed. The second component referenced above was completed by passage of House Bill 1 which was approved by the Idaho Legislature and was signed by Governor Little on February 13, 2019. The final component, which is the decree of the new water rights by the SRBA Court, was set in motion by the passage of House Bill 1, and is the component recently approved by the SRBA Court.

**Approval by the SRBA Court.** Following the passage of House Bill 1, motions were filed with the SRBA Court in February 2019 to approve of the Stipulation and for the SRBA Court to issue decreed water rights providing for the fill and refill of the Boise River Reservoirs during and following flood control releases and to modify the existing storage water rights. Several cities, including the City of Mountain Home and the City of Boise sought to participate in the hearings before the SRBA Court. The City of Mountain Home took the position that the motions should be denied and the refill water rights should not be decreed as proposed because of procedural reasons. Following several hearings on the motions, including whether the City of Mountain Home and the City of Boise should be allowed to even participate given their late notice and involvement in five plus years of litigation, the SRBA Court issued an Order Deny Participation by the City of Mountain Home and the City of Boise because they were untimely and their arguments lacked merit. A hearing was subsequently held on July 16, 2019, and the SRBA Court granted the motions as requested by the Stipulation, issued the decrees for the Refill 1 and Refill 2 water rights, and granted the motion to modify the existing storage rights to be consistent with the new refill rights. The appeal deadline on the SRBA Court's decision is not until August 30, 2019, but in the meantime motions to dismiss the pending appeals with the Idaho Supreme Court have been filed. Assuming no appeals are filed, and assuming the Idaho Supreme Court dismisses the appeals as requested, the final component of the Stipulation has been completed and the matter is resolved.