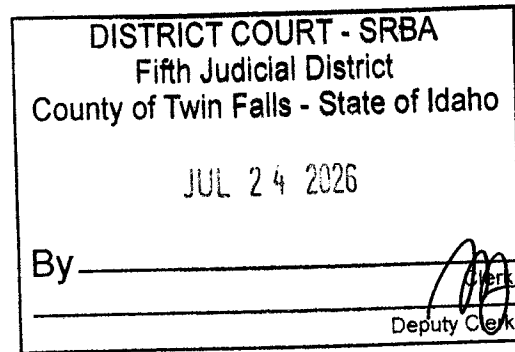




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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

IN RE: SRBA

Case No. 39576

Subcase No. 34-10901

**MEMORANDUM IN SUPPORT OF
STATE OF IDAHO'S MOTION FOR
DECLARATORY JUDGMENT
RE ADMINISTRATION
OF WATER RIGHT 34-10901**

The State of Idaho ("State"), by and through its counsel of record, and pursuant to Snake River Basin Adjudication ("SRBA") Administrative Order 1 §§ 1 & 6, Rules

7(b) and 57(a) of the Idaho Rules of Civil Procedure, and Idaho Code §§ 10-1201—10-1217, hereby submits this memorandum in support of the State of Idaho’s Motion for Declaratory Judgment re Administration of Water Right 34-10901 (“*Motion*”), filed herewith. For the reasons discussed herein, this Court should grant the *Motion* and issue an order declaring that decreed ground water right 34-10901 is subject to administration by the Director of the Idaho Department of Water Resources (“Director”) in accordance with Idaho law, including, but not limited to, an order from the Director requiring the United States Department of Energy (“DOE”) to either curtail diversions or provide mitigation as necessary to prevent or remedy material injury to decreed senior-priority water rights.

INTRODUCTION

Water right 34-10901 is a federal reserved water right for ground water use at the DOE’s Idaho National Laboratory (“INL”) in southeastern Idaho. In 2003, this Court decreed water right 34-10901 in the name of the DOE, with a priority date of April 7, 1950, Exhibit A (“*Partial Decree*”),¹ pursuant to the 1990 “Water Rights Agreement” between the State and the DOE (“Agreement”). Exhibit B.² In the Agreement, the parties stipulated they were “unable to agree upon whether the issue of administration is ripe or otherwise appropriate for decision in the SRBA,” and if so, “whether and to what extent the Director has authority to administer federal

¹ Exhibit A is a copy of the *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 34-10901* (Jun. 20, 2003) (“*Partial Decree*”), and is attached to the *Declaration of Counsel in Support of the State of Idaho’s Motion for Declaratory Judgment re Administration of Water Right 34-10901 (Counsel Dec.)*, filed herewith. All exhibits cited in this memorandum are attached to the *Counsel Dec.* Page citations are to the internal pagination of the cited Exhibit.

² Exhibit B to the *Counsel Dec.* is a copy of the body of the Agreement.

water rights.” *Id.* at 8 ¶ 6.1. Each of the parties “reserve[d] the right to litigate the issue of administration, if and when the need arises.” *Id.*

The reserved issue of the Director’s authority to administer DOE’s water right under Idaho law is now “ripe” and the “need” to litigate it has arisen. *Id.*

The DOE has challenged and refused to accept the Director’s authority to administer water right 34-10901 (“DOE’s water right”) according to its decreed priority in the Surface Water Coalition delivery call proceedings pending before the Idaho Department of Water Resources (“IDWR”). The DOE’s challenge to the Director’s authority is appropriate for decision in the SRBA and should be addressed by this Court because: (1) the *Partial Decree* reserved this question for future litigation; and (2) it falls within this Court’s retained jurisdiction over SRBA proceedings “related” to the *Final Unified Decree*.

The State views the DOE’s arguments as a grave threat to the finality of the *Final Unified Decree* and the State’s sovereign authority to apply its own legal code and procedures for the administration of water rights. *See United States v. United States Bd. of Water Commissioners*, 893 F.3d 578, 595 (9th Cir. 2018) (“there is no federal water law. Fundamental principles of federalism vest control of water rights in the states”); *California v. United States*, 438 U.S. 645, 653 (1978) (referring to “the consistent thread of purposeful and continued deference to state water law by Congress”). Under both State and federal law, the Director is authorized to administer the DOE’s water right according to its decreed priority, and this Court should grant the State’s *Motion*.

BACKGROUND

I. THE SRBA PROCEEDINGS.

The SRBA commenced in 1987 pursuant to a “Petition” the State filed in this Court. *In Re SRBA Case No. 39576, Subcase No. 37-00864*, 164 Idaho 241, 244, 429 P.3d 129, 132 (2018).³ The Petition requested an order commencing a general adjudication to determine all water rights in the Snake River Basin, and to also make “*all determinations necessary and proper for the administration of the water rights determined in the general adjudication.*” Exhibit C at 13 (italics added); *see also* Exhibit E at 1 (“*Final Unified Decree*”) (same).⁴ The *Final Unified Decree* conclusively determined that the SRBA is “a general stream adjudication” of all water rights “arising under state or federal law” for use of surface and ground waters of the Snake River Basin, “*and for the administration of such rights.*” Exhibit E at 6 (italics added).

The State’s Petition and this Court’s Commencement Order specifically identified “the United States” as one of the “Defendants,” Exhibit C at 1; Exhibit D at 1,⁵ and the United States was joined to the SRBA as a party pursuant to 43 U.S.C. § 666, the “McCarran Amendment.” Exhibit E at 4, 7. As this Court is aware, the United States filed SRBA claims for many thousands of water rights and filed thousands of “objections” and “responses” to water right claims filed by others. The

³ Excerpted pages of the State’s “Petition” and this Court’s “Commencement Order” are attached to the *Counsel Dec.* as Exhibit C and Exhibit D.

⁴ Exhibit E to the *Counsel Dec.* is a copy the *Final Unified Decree* that this Court issued in 2014, excluding the voluminous “Attachments.”

⁵ The SRBA is an “in rem” action, *United States v. Black Canyon Irrigation Dist.*, 163 Idaho 54, 60–61, 408 P.3d 52, 58–59 (2017), and “all claimants” of water rights in the Snake River Basin water system are “defendants.” Exhibit D at 1.

United States has been decreed thousands of water rights in the SRBA, some based on state law and some on federal law (“federal reserved rights”), and has been an active participant in many important SRBA proceedings.⁶

In 1990, the State and DOE submitted the Agreement to this Court “in lieu” of requiring DOE to file a “notice of claim” for a federal reserved right at INL, as then authorized under Idaho Code § 42-1409(3).⁷ Exhibit B at 1 ¶ 1.2. The Agreement set forth the agreed-upon “elements” of the DOE’s water right. *Id.* at 1, 7-8. With respect to “Administration” of the DOE water right, however, the State and DOE were “unable to agree upon whether the issue of administration is ripe or otherwise appropriate for decision in the SRBA, and if so, whether and to what extent the Director has authority to administer federal water rights.” *Id.* at 8. The Agreement specifically “d[id] not address this issue,” and each party “reserve[d] the right to litigate the issue of administration, if and when the need arises.” *Id.*; *see also id.* at 14 ¶ 9.7.6 (“Nothing in the Agreement shall be construed or interpreted ... To limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement.”).

In 2003, this Court entered a partial decree *nunc pro tunc* defining the elements of DOE’s water right consistent with the Agreement. Exhibit A. The “Other Provisions” section of the *Partial Decree* states “[t]his water right is a federal reserved

⁶ Including, but not limited to, SRBA proceedings on the United States’ claims for federal reserved water rights. *See, e.g., In Re SRBA Case No. 39576, United States v. State*, 131 Idaho 468, 959 P.2d 499 (1998); *In Re SRBA Case No. 39576, Potlatch Corp. v. United States*, 134 Idaho 916, 12 P.3d 1260 (2000); *In Re SRBA Case No. 39576, State v. United States*, 134 Idaho 940, 12 P.3d 1284 (2000).

⁷ This statute was amended in 1994 and no longer authorizes such agreements. 1994 Idaho Sess. L. 1459.

water right” that “incorporates and is subject to the terms of the [Agreement].” *Id.* In 2014, this Court incorporated the *Partial Decree* into the *Final Unified Decree* and included the Agreement in “Attachment 4.” Exhibit E at 10 ¶ 2; *id* at 13 ¶ 15). This Court also expressly “retain[ed] jurisdiction of this proceeding to ... resolve any issues related to the Final Unified Decree that are not reviewable under the Idaho Administrative Procedures Act and/or the rules of the Idaho Department of Water Resources[.]” *Id.* at 13 ¶ 17.

II. THE DELIVERY CALL PROCEEDINGS.

In 2005, the Surface Water Coalition (“SWC”)⁸ filed a “delivery call” under IDWR’s “Rules for Conjunctive Management of Surface and Ground Water Resources,” IDAPA 37.03.11.000-.050 (“CM Rules”), seeking curtailment of junior-priority ground water rights diverting from the Eastern Snake Plain Aquifer (“ESPA”). *In the Matter of Distribution of Water to Various Water Rts. Held By or For Ben. of A & B Irrigation Dist., et al.*, 155 Idaho 640, 643, 315 P.3d 828, 831 (2013).⁹ Since then, the Director has regularly issued orders in the delivery call proceedings that quantify material injury to the senior-priority surface water rights held by the members of SWC. The Director has also frequently issued curtailment orders requiring holders of the junior-priority ground water rights causing material injury

⁸ The SWC is comprised of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

⁹ The SWC’s delivery call is pending before the Director of IDWR under IDWR Docket No. CM-DC-2010-001. Copies of the Director’s orders and the parties’ filings in the SWC delivery call proceedings are available to the public on IDWR’s website, <https://idwr.idaho.gov/delivery-call-action/swc-2010/>. This Court may take judicial notice of these orders and filings. I.R.C.P. 44(a); I.R.E. 201(b)-(c).

to either curtail their diversions or provide mitigation.

Holders of both senior-priority surface water rights and junior-priority ground water rights have often sought administrative hearings before IDWR on the Director's orders, and often challenged them in judicial review proceedings in this Court, several of which have been appealed to the Idaho Supreme Court. Some of this Court's and the Idaho Supreme Court's most consequential water law decisions have been issued in these judicial review proceedings and appeals. *See, e.g., In the Matter of Distribution of Water to Various Water Rts.*, 155 Idaho at 650, 315 P.3d at 838 ("This case illustrates the tension between the first in time and beneficial use aspects of the prior appropriation doctrine."). While the DOE has had many opportunities over the past twenty years to participate in the administrative contested cases and judicial review proceedings challenging the Director's orders in the SWC delivery call, it has never done so.

This spring, the Director issued an order that predicted the SWC's senior-priority surface water rights would suffer a shortfall of 181,600 acre-feet due to diversions by junior-priority ground water rights. Exhibit F at 4-5.¹⁰ The order also determined that addressing this injury would require holders of consumptive water rights with priority dates junior to October 11, 1900, to either provide mitigation to the SWC or curtail their diversions. *Id.* at 5-7. The DOE did not challenge or request a hearing on this order. The DOE also did not request a hearing on the Director's

¹⁰ Exhibit F to the *Counsel Dec.* is a copy of the Director's *Final Order Regarding April 2026 Forecast Supply (Methodology Steps 1-3)* (IDWR Docket no. CM-DC-2010-001) (Apr. 16, 2026).

earlier order adopting the overall “methodology” used to determine which junior ground water rights must be curtailed, although other junior-priority ground water right holders did. Exhibit G at 1 n.1.¹¹

On May 14th, the Director ordered the holders of ground water rights junior to October 11, 1900—including the DOE—to “curtail/refrain from diversion and use of ground water” under those rights, unless they were covered by an approved mitigation plan. Exhibit G at 3-4 & Attachment A at 20 of 21 (“*May Curtailment Order*”). The Director provided a fifteen-day grace period to holders of certain junior ground water rights that had not previously been curtailed—including the DOE—so they could join an existing mitigation plan and avoid curtailment. *Id.* at 4.

III. THE DEPARTMENT OF ENERGY’S “PETITION.”

The DOE responded to the *May Curtailment Order* on May 28th by filing a “Petition for Reconsideration and Request for Hearing” with IDWR, and filed an amended petition a few days later, on June 3rd. Exhibit H (“*Amended DOE Petition*”).¹² The *Amended DOE Petition* asserted DOE was making a “special appearance” in the SWC delivery call proceeding “for the limited purpose of contesting IDWR’s ability to exercise jurisdiction over DOE,” but was also “seeking reconsideration” of the *May Curtailment Order* pursuant to Idaho Code § 67-5264(4)

¹¹ Exhibit G to the *Counsel Dec.* is a copy of the Director’s *Final Order Curtailing Ground Water Rights Junior to October 11, 1900* (IDWR Docket no. CM-DC-2010-001) (May 14, 2026) (“*May Curtailment Order*”).

¹² Exhibit H to the *Counsel Dec.* is a copy of the *Amended DOE Petition*, excluding its “exhibits.” Two of the three “exhibits” (the Agreement and the *Final Unified Decree*) are already part of the SRBA record and are separately attached to the *Counsel Dec.*, as Exhibit B and Exhibit E. The third DOE “exhibit” is a copy of the Director’s curtailment order of July 25, 2025, which is available for viewing on IDWR’s website. <https://idwr.idaho.gov/delivery-call-action/swc-2010/>.

and IDWR's Rules of Procedure. Exhibit H at 1.

The DOE conceded it was properly joined to the SRBA under the McCarran Amendment, 43 U.S.C. § 666, and that the *Final Unified Decree* is valid. Exhibit H at 7. The DOE nonetheless asserted IDWR has no authority to curtail the DOE's decreed water right, because the Agreement "does not confer upon [IDWR] any right to curtail or otherwise administer DOE's adjudicated water rights." *Id.* at 2. The DOE further asserted that the Agreement—not the *Partial Decree*—is the "conclusive" definition of the DOE's water right, *id.* at 2-9, and of "paramount importance" in determining any question of the nature, extent, and administration of the DOE's water right. *Id.* at 8.

The DOE argued that IDWR's administration of decreed water rights falls outside the McCarran Amendment's waiver of sovereign immunity, because it only applies to "suits," while "the delivery call process is purely administrative and not an integrated 'suit.'" Exhibit H at 4-5. The DOE asserted the United States' waiver of sovereign immunity in the SRBA under the McCarran Amendment does not include consent "to routine state curtailment or administration" of the United States' decreed water rights, *id.* at 5, and IDWR's administrative authority "yields in this instance to the United States' sovereign immunity[.]" *Id.* at 8.

Despite asserting it was only making a "special appearance" in the SWC's delivery call proceeding for the "limited" purpose of disputing IDWR's "jurisdiction" to administer the DOE's water right, Exhibit H at 1, the DOE also disputed the substance of the *May Curtailment Order*. *Id.* at 9-16. The substance of that order is

not at issue here, however. The State's *Motion* does not address or put at issue the DOE's substantive challenges to the *May Curtailment Order*.¹³

The DOE informed IDWR on July 14 that it had "voluntarily elected" to join the Big Lost River Ground Water District for purposes of mitigation "only for the 2026 water year." Exhibit I.¹⁴ The DOE "expressly preserve[d]" its legal positions and arguments "related to federal reserved water rights, sovereign immunity, federal preemption, and the limits of state administrative authority." The DOE also emphasized it "ha[d] not withdrawn its petition" and specifically retained its ability "to challenge IDWR curtailment authority in any forum." *Id.*

On July 24, the Director rescinded the *May Curtailment Order* to the extent it applied to the DOE's water right because the DOE had joined the Big Lost River Ground Water District for purposes of mitigation during the 2026 water year. Exhibit J at 3.¹⁵ The Director also determined the DOE's request for reconsideration of the *May Curtailment Order* had been denied by operation of law and denied the DOE's request for a hearing on the *May Curtailment Order*. *Id.* at 2. With respect to the DOE's arguments that the Director lacks authority to administer the DOE's water right, the Director concluded that the *Partial Decree* had "reserved the issue of administration for future determination," and therefore "the issues raised by the

¹³ The State disagrees with the DOE's substantive challenges to the *May Curtailment Order*, however, and reserves its right to respond to them, if and when the need arises.

¹⁴ Exhibit I to the *Counsel Dec.* is a copy of an email sent by DOE Chief Counsel Tanner Crowther to Deputy Attorneys General Garrick Baxter and Joy Vega, dated July 14, 2026.

¹⁵ Exhibit J to the *Counsel Dec.* is a copy of the Director's *Order Rescinding 2026 Curtailment of DOE Water Right No. 34-10901; Order Denying Request for Hearing* (Jul. 24, 2026).

DOE are more appropriately raised before the SRBA District Court.” *Id.* at 2-3.

ARGUMENT

In the pending SWC delivery call proceedings, the Director ordered that the DOE must either curtail diversions under the DOE’s junior-priority ground water right or participate in an approved mitigation plan to protect senior-priority surface water rights. Exhibit G at 3-4 & Attachment A at 20 of 21. The DOE responded by arguing that the State, acting through the Director and IDWR, lacks authority to administer the DOE’s water right according to its decreed priority. Exhibit H at 1-10.

The State completely disagrees. Further, the DOE’s sovereign immunity arguments undermine the finality of the *Final Unified Decree* and imperil the State’s sovereign authority to apply its own legal code and procedures for the administration of water rights. *See Black Canyon Irrigation Dist.*, 163 Idaho at 64, 408 P.3d at 62 (“Finality is for good reason, especially in water law; otherwise, the approximate \$94 million the State expended in judicial and administrative costs during the SRBA would be jeopardized as mere wasteful expenditures.”); *United States Bd. of Water Commissioners*, 893 F.3d at 595 (“there is no federal water law. Fundamental principles of federalism vest control of water rights in the states”); *California*, 438 U.S. at 653 (discussing “the need to observe state water law”).

Thus, the reserved “issue of administration” of DOE’s water right is now “ripe” and there is a “need” to “litigate” it. Exhibit B at 8 ¶ 6.1. This issue is “appropriate for decision in the SRBA,” *id.*, through declaratory judgment proceedings. This Court should grant the State’s *Motion* because under both state and federal law, the

Director has authority to administer the DOE's water right in accordance with Idaho law, including but not limited to the authority to issue orders requiring DOE to either curtail diversions or provide mitigation as necessary to prevent or remedy material injury to decreed senior-priority water rights.

I. THIS COURT CAN RESOLVE THE "ISSUE OF ADMINISTRATION" OF DOE'S WATER RIGHT THROUGH DECLARATORY JUDGMENT PROCEEDINGS.

The Idaho Declaratory Judgment Act ("IDJA") empowers this Court "to declare rights, status, and other legal relations, whether or not further relief is or could be claimed." Idaho Code § 10-1201. "The purpose of the IDJA is remedial." *Lingnaw v. Lumpkin*, 167 Idaho 600, 605, 474 P.3d 274, 279 (2020). The IDJA must be "liberally construed and administered" to serve this purpose, and "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations[.]" *Id.* (quoting Idaho Code § 10-1212).

Declaratory relief is appropriate when the controversy is "definite and concrete, touching the legal relations of parties having adverse legal interests." *Id.* The controversy must be "real and substantial" and "admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Id.* A district court's decision to grant or deny declaratory relief is reviewed for abuse of discretion. *Farmers Ins. Exch. v. Tucker*, 142 Idaho 191, 193-95, 125 P.3d 1067, 1069-71 (2005).

A. THERE IS A DEFINITE AND CONCRETE CONTROVERSY OVER THE ADMINISTRATION OF THE DOE'S WATER RIGHT.

Clearly, there is a "definite and concrete" controversy between the State and

DOE over administration of the DOE's decreed water right. *Lingnaw*, 167 Idaho at 605, 474 P.3d at 279. The Director ordered that the DOE must either curtail diversions under the DOE's junior-priority ground water right or participate in an approved mitigation plan. Exhibit G at 3-4 & Attachment A at 20 of 21. The DOE responded by directly challenging the Director's authority to administer the DOE's water right pursuant to Idaho law. *See* Exhibit H at 2 ("IDWR Has No Authority to Curtail DOE's Adjudicated Water Rights."). Further, the DOE joined a mitigation plan "only for the 2026 water year" and "expressly preserved" its legal positions, arguments, and "ability to challenge IDWR curtailment authority in any forum." Exhibit I.

The DOE concedes IDWR's "general authority" to administer decreed water rights in accordance with Idaho's prior appropriation doctrine but insists "this general authority does not extend to DOE's adjudicated water rights." Exhibit H at 3. The DOE supports this assertion with two arguments: (1) "IDWR's administrative process falls outside the limited waiver of sovereign immunity granted by the McCarran Amendment"; and (2) "the United States did not consent [in the Agreement] to routine state curtailment or administration of its quantified rights." *Id.*

Under Idaho law, however, "the Director has a 'clear legal duty' to distribute water according to decreed water rights." *City of Blackfoot v. Spackman*, 162 Idaho 302, 309, 396 P.3d 1184, 1191 (2017) (quoting *In Re SRBA*, 157 Idaho 385, 393, 336 P.3d 792, 800 (2014)); *see also* Idaho Code § 42-1413(2) ("Upon entry of a final decree,

the director shall administer the water rights by distributing water in accordance with the final decree and with title 42, Idaho Code.”). Idaho law requires junior-priority water rights to be curtailed “during times of water scarcity, in order to supply the prior rights of others.” Idaho Code § 42-607. Thus, in a delivery call proceeding under the CM Rules, the Director “must either: (1) curtail junior-priority ground water pumping to satisfy the senior’s right, or (2) ‘[a]llow out-of-priority diversion of water by junior-priority ground water users pursuant to a mitigation plan that has been approved by the Director.’” *Rangen, Inc. v. IDWR*, 160 Idaho 251, 256, 371 P.3d 305, 310 (2016) (quoting IDAPA 37.03.11.040.01) (brackets in *Rangen*), *abrogated in part on other grounds by 3G AG LLC v. IDWR*, 170 Idaho 251, 509 P.3d 1180 (2022).

The Director is a State officer and acts pursuant to State law. Idaho Code § 42-1701(1)-(2); *see also Nettleton v. Higginson*, 98 Idaho 87, 91, 558 P.2d 1048, 1052 (1977) (“The governmental function in enacting not only I.C. s 42-607, but the entire water distribution system under Title 42 of the Idaho Code is to further the state policy of securing the maximum use and benefit of its water resources.”). The DOE’s refusal to recognize the Director’s authority to administer the DOE’s decreed water right interferes with the Director’s clear legal duty to administer decreed water rights pursuant to Idaho law.

Thus, the “issue of administration” that the State and DOE reserved for future litigation in 1990—“whether and to what extent the Director has authority to administer” the DOE’s water right—is clearly “ripe,” Exhibit B at 8 ¶ 6.1, and must

now be resolved.¹⁶ This issue presents a “definite and concrete” dispute “touching the legal relations of parties having adverse legal interests.” *Lingnaw*, 167 Idaho at 605, 474 P.3d at 279. It is primarily if not entirely a legal dispute, and well-suited for resolution via declaratory judgment proceedings.

B. THE DISPUTE OVER WHETHER THE DIRECTOR HAS AUTHORITY TO ADMINISTER THE DOE’S DECREED WATER RIGHT IS AN SRBA ISSUE.

The question of whether the Director has authority to administer the DOE’s decreed water right in accordance with Idaho law is “appropriate for decision in the SRBA.” Exhibit B at 8 ¶ 6.1. This Court acquired exclusive jurisdiction over this question upon commencement of the SRBA and retained jurisdiction over it in the *Final Unified Decree*.

The SRBA is a “general stream adjudication” to resolve all claims for water rights in the Snake River Basin within Idaho “arising under state or *federal law ... and for the administration of such rights.*” Exhibit E at 6 (italics added); *see also id.* at 1 (same). Thus, upon commencement of the SRBA, this Court acquired jurisdiction over the “adjudication” and “administration” of *all* claimed water rights, including those arising under federal law. *Id.* at 1, 6. This jurisdiction is “exclusive” as a matter of law. *See State Engineer of State of Nevada v. S. Fork Band of Te-Moak Tribe of Shoshone Indians of Nevada*, 339 F.3d 804, 809-10 (9th Cir. 2003) (explaining the doctrine of “prior exclusive jurisdiction”).

Further, this Court “retains jurisdiction” to resolve “any issues related to the

¹⁶ In the State’s view, the “issue of administration” was already “ripe” for resolution in the SRBA at the time of Agreement. *See* Exhibit B at 8 ¶ 6.1 (“The parties are unable to agree upon whether the issue of administration is ripe or otherwise appropriate for decision in the SRBA”).

Final Unified Decree” that fall outside IDWR’s administrative authority. Exhibit E at 13 ¶ 17. The question of whether the Director has authority to administer the DOE’s water right according to its decreed priority clearly is “related” to the *Final Unified Decree*, because: (1) the SRBA is a proceeding for both the “adjudication” of “all water rights” and “for the administration of such rights,” *id.* at 6 ¶ 1; and (2) the *Final Unified Decree* reserved the “issue of administration” of the DOE’s water right for future “litigation,” Exhibit B at 8 ¶ 6.1, by “incorporat[ing]” the *Partial Decree* and the Agreement. *Id.* at 10 ¶ 2, 13 ¶ 15; *see* Exhibit A (“This water right incorporates and is subject to the terms of the [Agreement]”).

It follows that the “reserved” issue of “whether and to what extent” the Director has authority to administer the DOE’s decreed water right according to Idaho law is “appropriate for decision in the SRBA.” Exhibit B at 8 ¶ 6.1. The SRBA was specifically intended and expressly defined to address such issues of administration, and this Court retained exclusive jurisdiction over the “issue of administration” reserved in the *Partial Decree*. The DOE is incorrect in suggesting that IDWR can resolve this reserved SRBA issue in a delivery call proceeding under the CM Rules. Exhibit H. It must be decided in the SRBA, by this Court. *See also* Exhibit J at 3 (“Because the SRBA District Court reserved the administration issue for future determination, the issues raised by the DOE are more appropriately raised before the SRBA District Court.”).

The DOE further claims that *all* the United States’ decreed water rights are immune from IDWR’s authority to administer water rights decreed in the SRBA. *See*

id. at 8 (“the United States did not consent to routine state curtailment or administration of its quantified rights”). This claim should be decided by this Court because it directly challenges this Court’s determinations that: (1) the SRBA is an action to adjudicate all claimed water rights in the Snake River Basin “*and for the administration of such rights,*” Exhibit E at 1, 6 (italics added); and (2) that the United States was properly joined as a party pursuant to the McCarran Amendment’s waiver of sovereign immunity. *Id.* at 4 ¶ 1; *id.* at 7 ¶ 4. Clearly, the DOE’s belated assertion of sovereign immunity raises an issue “related” to the *Final Unified Decree*. *Id.* at 13 ¶ 17.

The DOE tries to avoid this conclusion by incorrectly asserting the Agreement is the “conclusive” definition of “the nature and extent of Water Right 34-10901.” Exhibit H at 2-3. But under Idaho law the *Partial Decree* as incorporated into the *Final Unified Decree* is the conclusive definition of the nature and extent of the DOE’s water right. See *First Sec. Corp. v. Belle Ranch, LLC*, 165 Idaho 733, 741, 451 P.3d 446, 454 (2019) (“Those partial decrees were final adjudications of all the claims”); see also *Whittaker v. IDWR*, 174 Idaho 60, 71–72, 551 P.3d 729, 740–41 (2024) (“The SRBA Final Unified Decree is conclusive as to the nature and extent of all water rights within the Snake River Basin within the State of Idaho with a priority date prior to November 19, 1987 and is binding against all persons.”) (internal quotation marks omitted).

Further, the Agreement expressly “does not address” the issue of

administration but simply “reserves” it. Exhibit B at 8 ¶ 6.1.¹⁷ The SRBA was always intended to address issues of the administration of water rights claimed and decreed in the SRBA, including federal reserved rights. See Exhibit E at 6 ¶ 1 (“All water rights arising under state or federal law ... and for the administration of such rights”).

In sum, this Court can and should address, in SRBA proceedings, the issue the DOE has raised in the pending delivery call proceedings. This issue was reserved for future litigation in the SRBA, and this Court retains “prior exclusive jurisdiction” over the reserved issue. *Te-Moak*, 339 F.3d 804, 809-10. The “issue of administration” the DOE has raised is not only “appropriate” for resolution in the SRBA, Exhibit B at 8 ¶ 6.1, it *must* be resolved in the SRBA.¹⁸

II. THE DOE’S WATER RIGHT IS SUBJECT TO THE DIRECTOR’S AUTHORITY TO ADMINISTER WATER RIGHTS IN ACCORDANCE WITH IDAHO LAW.

The DOE asserts the Director lacks authority to administer the DOE’s water right because “IDWR’s administrative process falls outside the limited waiver of sovereign immunity granted by the McCarran Amendment.” Exhibit H at 3. This is so, the DOE argues, because the McCarran Amendment’s waiver of sovereign immunity is limited to “suit[s] ... for the administration of such rights,” *id.* (quoting 43 U.S.C. § 666(a)), while “the delivery call process is purely administrative and not an integrated ‘suit.’” *Id.* at 5. These arguments are legally flawed and contrary to the

¹⁷ The DOE’s assertion that the Agreement “does not confer” upon IDWR authority to administer the water right, Exhibit H at 2, is therefore misleading: it implies that the Agreement addressed an issue that it specifically did not, but rather expressly reserved for future litigation.

¹⁸ The State acknowledges that any decision this Court makes in SRBA proceedings regarding the administration of DOE’s water right is subject to review by the Idaho Supreme Court and the United States Supreme Court.

record.

Even more troubling, these sovereign immunity arguments are not limited to the DOE's water right or to federal reserved rights: they necessarily imply that *all* the United States' decreed water rights are immune from administration pursuant to Idaho water law. If these arguments are accepted they would gravely undermine a principal objective of the SRBA and the McCarran Amendment: to make the United States "subject to the judgments, orders, and decrees" of this Court "in the same manner and to the same extent as a private individual under like circumstances." 43 U.S.C. § 666(a).

A. The *Final Unified Decree* Authorizes the Director to Administer the United States' Decreed Water Rights in Accordance with State law.

The DOE's sovereign immunity arguments completely ignore the fact that the SRBA itself is a suit "for the administration" of the water rights. Exhibit E at 1, 6 ¶ 1. The *Final Unified Decree* squarely addresses administration of water rights decreed in the SRBA: "The decreed water rights shall be administered in the Snake River Basin water system in accordance with this Final Unified Decree and applicable federal, *state* and tribal law, including the administrative provisions set forth in the federal reserved water right settlement agreements in Attachment 4." *Id.* at 13 ¶ 15 (*italics added*). Like the decree at issue in *United States Bd. of Water Commissioners*, 893 F.3d at 595, the *Final Unified Decree* "presupposes state law in its entirety as to both substance and procedure." *Id.*

The DOE "does not dispute" that United States was properly joined as a party to the SRBA pursuant to the McCarran Amendment. Exhibit H at 7. Thus, it is

undisputed that the United States waived sovereign immunity in a unified “suit” for the “adjudication” of all claimed water rights in the Snake River Basin “*and for the administration of such rights*,” Exhibit E at 1, 6 ¶ 1—the exact language of the McCarran Amendment. 43 U.S.C. § 666(a). The United States has thus “waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty,” and is “subject to the judgments, orders, and decrees of [this Court], and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances.” *Id.* Under the plain language of the McCarran Amendment and the *Final Unified Decree*, the United States’ decreed water rights are subject to administration by the Director in accordance with Idaho water law.

The DOE’s characterization of the pending delivery call proceeding as a “purely administrative” proceeding, Exhibit H at 4-5, ignores the fact that the SRBA itself is a suit “for the administration of [decreed] rights,” Exhibit E at 1, 6 ¶ 1, and the *Final Unified Decree* expressly requires that decreed water rights be administered “in accordance Federal, *state*, and tribal law.” *Id.* at 13 ¶ 15 (*italics added*). Under *Idaho* law, the Director has the authority and the clear legal duty to administer decreed water rights according to their decreed priorities, *City of Blackfoot*, 162 Idaho at 309, 396 P.3d at 1191, and *must* apply the CM Rules in administering junior priority ground water rights pursuant to the SWC’s delivery call. *See S. Valley Ground Water Dist. v. IDWR*, 173 Idaho 762, 777, 548 P.3d 734, 749 (2024) (“The rules *prescribe procedures for responding to a delivery call made by*

the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right”) (quoting CM Rule 1) (italics in *S. Valley*).

Thus, when the Director determines in a CM Rules delivery call proceeding that a junior-priority ground water right holder is causing material injury to a senior-priority water right, the Director *must* order that the junior-priority ground water right be curtailed, unless its out-of-priority diversions are covered by a mitigation plan approved by the Director. *Rangen*, 160 Idaho at 256, 371 P.3d at 310. Under the plain language of the McCarran Amendment and the *Final Unified Decree*, these principles of Idaho water law apply to administration of the DOE’s decreed water right.

The DOE’s sovereign immunity arguments are also foreclosed by the preclusive effect of the *Final Unified Decree*. See *Black Canyon Irrigation Dist.*, 163 Idaho at 60, 408 P.3d at 58 (explaining the preclusive effect of a general adjudication). The *Final Unified Decree* conclusively determined that the SRBA is an action for the adjudication and administration of all water rights in the Snake River Basin, and that the United States had been properly joined as a party pursuant to the McCarran Amendment. The United States did not appeal these determinations, or any other part of the *Final Unified Decree*. The DOE’s argument that the United States did *not* waive sovereign immunity to the *administration* of decreed water rights in accordance with Idaho law is barred by *res judicata*, *Black Canyon*, 163 Idaho at 59, 408 P.3d at 57, and amounts to “an impermissible collateral attack” in the *Final Unified Decree*. *City of Blackfoot*, 162 Idaho at 307, 396 P.3d at 1189.

B. The McCarran Amendment Was Intended to Make the United States' Water Rights Subject to Administration Under State Law.

The DOE's assertion that the United States' decreed water rights are immune from administration by the Director is also contrary to the purpose and intent of the McCarran Amendment. The Supreme Court has recognized "the consistent thread of purposeful and continued deference to state water law by Congress," *California*, 438 U.S. at 653, and that the McCarran Amendment was intended to ensure that "each and every" water right holder, "including the United States," would "be amenable to the law of the State" so there could be "a proper administration of the water law as it has developed over the years." *Id.* at 678–79 (quoting S.Rep.No. 755, 82d Cong., 1st Sess., 3, 6 (1951)).

The McCarran Amendment must be understood as making the United States subject "to the entire body of water law administration procedures of each state, regardless of the forms in which they may exist." *Fed. Youth Ctr. v. Dist. Ct. In & For Jefferson Cnty.*, 575 P.2d 395, 400 (Colo. 1978). Any other interpretation would "allow the United States to take advantage of each state's water law system and acquire adjudicated water rights, without being limited by subsequent state actions attempting to assure the orderly use of those rights." *Id.* at 399. This is one of "the evils" Congress specifically intended to correct via the McCarran Amendment. *Id.* (quoting Senate Report No. 755, 82d Congress, 1st Session (1951)). As this Court determined upon commencement of the SRBA, "[t]he purpose of the McCarran amendment was to obtain jurisdiction over the federal government *in order that states may manage waters in an efficient and practical manner.*" Exhibit K at 30

(italics added).¹⁹

Thus, recognizing the Director's authority to administer the United States' decreed water rights in accordance with Idaho law is entirely consistent with the policy and purpose of the McCarran Amendment. It is also consistent with historic practice. State administration of the United States' decreed water rights under state law procedures has been the norm. *See, e.g., United States Bd. of Water Commissioners*, 893 F.3d at 595 ("Decreed rights are administered under applicable state law."); *United States v. Alpine Land & Reservoir Co.*, 697 F.2d 851, 858 (9th Cir. 1983) ("state law will control the distribution of water rights to the extent that there is no preempting federal directive").

The DOE's arguments to the contrary rely on an impermissibly narrow interpretation of the McCarran Amendment. While DOE is correct that the general rule is waivers of sovereign immunity should be narrowly construed, Exhibit H at 4, the Supreme Court has stated that "the McCarran Amendment is a virtually unique federal statute" and its application should not be guided "by general propositions." *Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545, 571 (1983). The Supreme Court has also cautioned that courts should not "assume the authority to narrow" an "unequivocally expressed" waiver of sovereign immunity. *United States v. Idaho*, 508 U.S. 1, 6-7 (1993); *see also United States v. Dist. Ct. In & For Eagle Cnty., Colo.*, 401 U.S. 520, 525 (1971) ("We think that argument is extremely

¹⁹ Exhibit K to the *Counsel Dec.* consists of copies of two pages excerpted from this Court's *Memorandum Opinion on Commencement of Adjudication* (Oct. 15, 1987).

technical; and we decline to confine 43 U.S.C. s 666 so narrowly.”).

The McCarran Amendment “unequivocally” waives sovereign immunity and the scope of the waiver “can only be ascertained by reference to underlying congressional policy” and “indicia of Congressional intent.” *United States v. State of Or.*, 44 F.3d 758, 766 (9th Cir. 1994). As the Supreme Court has made clear, “congressional policy” and “indicia of congressional intent” require the McCarran Amendment’s waiver to be understood as making the United States “amenable to the law of the State” so there can be “a proper administration of the water law as it has developed over the years.” *California*, 438 U.S. at 678–79. The United States waived sovereign immunity in the SRBA, and therefore the United States’ decreed water rights are subject to administration in accordance with applicable Idaho law, as ordered in the *Final Unified Decree*. Exhibit E at 13 ¶ 15.

C. The DOE’s Federal Reserved Water Right is Subject to Priority Administration by the Director in Delivery Call Proceedings.

Federal reserved rights are not based on “beneficial use” under state law, but rather on express or implied reservations of water by Congress. *See generally United States v. State*, 131 Idaho 468, 469–71, 959 P.2d 449, 450–52 (1998) (discussing express and implied reservations).²⁰ Nonetheless, the McCarran Amendment requires the United States to claim its federal reserved water rights in state water right adjudications, and the resulting decrees are binding on the United States as to

²⁰ DOE’s reliance on this decision, Exhibit H at 6, is misplaced because “PWR 107” *expressly* reserved water. *See United States v. State*, 131 Idaho at 471, 959 P.2d at 452 (“we conclude that PWR 107 evidences an express intention by Congress that reserves a water right in the United States”). The DOE’s water right, in contrast, is an *implied* water right based on federal reservations of *land*. Exhibit B at 3-4.

the nature and extent of the water rights. *See Dist. Ct. In & For Eagle Cnty*, 401 U.S. at 524 (“s 666(a)(1) has no exceptions and ... as we read it, includes appropriate rights, riparian rights, and reserved rights”).

In Idaho and most other western states, federal reserved water rights are decreed with a priority date, just like any other water right. *See* Exhibit A (“Priority Date: 04/07/1950”). “Priority in time is an essential part of western water law and to diminish one’s priority works an undeniable injury to that water right holder.” *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 797–98, 252 P.3d 71, 78–79 (2011).

The priority date defines the water right’s “place in line” when water is short and junior-priority water rights must be curtailed to protect senior-priority water rights. *See, e.g.,* Id. const. art. XV § 3 (“Priority of appropriation shall give the better right as between those using the water”); Idaho Code § 42-106 (“first in time is first in right”). One of the overarching purposes of the SRBA was to “fashion a unified decree” that “would allow for the creation of an accurate schedule of water rights to assure the proper delivery of water in times of shortage.” *In Re SRBA Case No. 39576 Subcase No. 37-00864*, 164 Idaho 241, 244, 429 P.3d 129, 132 (2018).

Decreed federal reserved water rights are generally subject to priority administration and curtailment in accordance with state law. *See, e.g., United States v. Bell*, 724 P.2d 631, 644 (Colo. 1986) (“The United States must submit its quantified reserved water rights for administration by state officials”); *see also United States v. Orr Water Ditch Co.*, 309 F. Supp. 2d 1245, 1253 (D. Nev. 2004) (“the [Tribe’s federal reserved water] rights are subject to other state law requirements governing

procedural and substantive administration of water rights on the Truckee River.”), *aff’d sub nom. United States v. Truckee-Carson Irrigation Dist.*, 429 F.3d 902 (9th Cir. 2005); *United States v. City & Cnty. of Denver, By & Through Bd. of Water Comm’rs*, 656 P.2d 1, 35 (Colo. 1982) (stating the United States agreed “that [federal reserved] water rights ultimately adjudicated to it are subject to administration by the State Engineer.”).

Administering federal reserved water rights according to their decreed priorities does not undermine federal law, because federal reserved rights can only reserve *unappropriated* water—water that is not already subject to senior-priority water rights. *See Cappaert v. United States*, 426 U.S. 128, 138 (1976) (“when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, *reserves appurtenant water then unappropriated* to the extent needed to accomplish the purpose of the reservation.”) (italics added). Thus, while decreed federal reserved rights are “superior to the rights of *future* appropriators,” *id.* (italics added), they are inferior to the rights of *prior* appropriators. Decreed senior-priority water rights are property rights that vested prior to the federal reservation and cannot be taken without compensation. *See Clear Springs Foods, Inc.*, 150 Idaho at 797, 252 P.3d at 78 (“When one has legally acquired a water right, he has a property right therein that cannot be taken from him for public or private use except by due process of law and upon just compensation being paid therefor.”).

In short, federal reserved water rights can be curtailed in accordance with

state law as necessary to protect senior-priority water rights. The Director therefore has authority to order the DOE to either curtail diversions under its junior-priority federal reserved water right or mitigate for those diversions, as required by Idaho law. The DOE's argument that the Director lacks authority to administer the DOE's water right in priority simply because it is a *federal reserved water right* is contrary to well-established state and federal law.

CONCLUSION

For the reasons set forth above, the State of Idaho respectfully requests that this Court grant the State of Idaho's Motion for Declaratory Judgment re Administration of Water Right 34-10901, and issue an order declaring that Water Right 34-10901 is subject to administration by the Director of the Idaho Department of Water Resources in accordance with Idaho law, including, but not limited to, an order from the Director orders requiring DOE to either curtail diversions or provide mitigation as necessary to prevent or remedy material injury to decreed senior-priority water rights.

Respectfully submitted this 24th day of July, 2026.

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CERTIFICATE OF FILING & SERVICE

The undersigned hereby certifies that on July 24, 2026, the original of the foregoing was filed with the Court, and copies and served on the parties, by the methods indicated below:

1. ORIGINAL – filed by hand:

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2. COPIES – served by U.S. Mail:

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