



## News Release

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### **SRBA Court Issues Decisions Concerning Valley Water Storage Rights**

On September 01, 2016, Judge Eric Wildman, presiding judge for the Snake River Basin Adjudication Court, issued decisions in the Contested Case and Late Claims proceedings addressing the right to fill the Boise River Basin 63 Reservoirs, and use the water following flood control releases.

The Memorandum and Order issued by the Judge in the Contested Case proceedings made it clear that the Idaho Department of Water Resources' Director was incorrect in his 2015 Order to deny a water right to exist for water that is stored in the reservoirs following flood control releases.

The judge's decision instead recognizes there has been an historic filling of the Boise River Basin Reservoirs following flood control releases as well as a beneficial use of that water by the irrigators since prior to 1971.

The decision clearly states that, "All three of the subject dams were completed well before 1971. The record establishes that flood control years and the resulting flood control releases occurred many times before 1971, and that in all of those years, water identified by the Director as unaccounted for storage was diverted, stored and ultimately used by the irrigators for irrigation. . . . Under the constitutional method, the diversion and use of such water is all that is necessary to complete the appropriation and obtain a vested water right. Simply stated, if unaccounted for storage water has been historically and continuously diverted, stored and used by the irrigators for irrigation back before 1971, as the Director expressly recognizes, then the United States and irrigators have acquired a vested constitutional method water right in that water under Idaho law."

"This common sense decision by Judge Wildman vindicates our contention that the IDWR Director's decision last fall was out of line in the efforts to change long-standing water right principles governing the Boise River system," said Roger Batt, Executive Director of the

Treasure Valley Water Users Association. “We have maintained from the beginning that storage water right holders in the Treasure Valley should have their total allowance of water for beneficial uses available throughout the irrigation year as they have had under decades of historical reservoir fill and diversion practices. The water users must have more than a vague allowance to store and use the water – they must have a protectable water right.”

Judge Wildman’s Memorandum and Order also left irrigators scratching their heads as to the portion of the decision which agreed with the Director that water released for flood control purposes should be charged against the current storage water rights of water right holders.

“We were surprised and are disappointed in this part of the decision that basically says water released down river that is not put to any beneficial use, and is released for operational flood control purposes, now counts against us as water that has been beneficially used,” said Clinton C. Pline, Chairman of the Nampa & Meridian Irrigation District Board. “It has always been our understanding that flood control is not considered a beneficial use under Idaho Water law and should not be counted as satisfying the existing storage water rights. We respectfully disagree with the judge on this part of the decision.”

In the Memorandum Decision concerning the Late Claims, the judge reversed the Special Master’s Recommendation but again reiterated that no party disputes that the reservoirs have historically been physically filled following flood control releases. This same water has been historically allocated and used by the irrigators for irrigation purposes. The judge remanded this back to the Special Master of the SRBA Court for future proceedings to determine the validity of the water right claims for the right to physically fill the reservoirs following flood control releases.

Moving forward, decisions will be evaluated to determine whether to appeal to the Idaho Supreme Court, including the issue regarding Flood Control Releases counting against reservoir storage water rights, or whether the issue could be resolved through the Idaho Legislative process.

The Treasure Valley Water Users Association was formed in 2015 to provide a collaborative effort to deal with the threats posed to the Treasure Valley Water User Community. The Association currently represents about 300,000 irrigated-acres spanning between Boise and Parma including the irrigation delivery entities who deliver water to the water user community.

***Editor’s Note: A copy of the decision can be found on our website at [www.treasurevalleywaterusers.com](http://www.treasurevalleywaterusers.com) under News.***