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Attorneys for Emmett Irrigation District

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 Nos. 65-11412 and 65-11412A

**EMMETT IRRIGATION DISTRICT'S
RESPONSES TO UNITED STATES' SECOND
SET OF INTERROGATORIES, REQUESTS FOR
PRODUCTION, AND REQUESTS FOR
ADMISSION**

This document and its attachments contain the Emmett Irrigation District's ("District" or "EID") Responses to the United States' Second Set of Interrogatories, Requests for Production and Requests for Admission to Emmett Irrigation District. This response is made in accordance with the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. The District has not completed its own investigations and/or discovery.

Accordingly, the responses that follow are based upon the best knowledge, information, and

belief of the District at this time. The District reserves the right to make any further responses if it appears that any omission or error has been made in connection with these responses or that more accurate information is or has become available. These responses are made without prejudice to the District's right to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

2. The District objects to the definitions and instructions to the extent they purport to require discovery responses beyond that required under the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these discovery requests.

3. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of or any statement, material, or information provided were made by witnesses present and testifying in court. All such objections are reserved and may be interposed at the time of trial.

4. The District specifically objects to these discovery requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rules of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not be repeated for each request to which it applies. The District has, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

5. No incidental or implied admissions are intended. The fact that the District has responded to any discovery request or part thereof should not be taken as an admission that the District accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact the District has responded to all or part of a request is not intended to and shall not be construed to be a waiver by Respondents of all or part of any objection to other requests. The District's answers to any discovery requests herein do not constitute a waiver of the District's right to object to any future, additional, or supplemental discovery requests regarding the same or similar matters.

In this supplemental response, the District will include only those discovery requests to which it is providing supplemental responses.

**RESPONSES AND ANSWERS TO INTERROGATORIES, REQUESTS
FOR PRODUCTION, AND REQUESTS FOR ADMISSION**

INTERROGATORY NO. 18: Identify each person who provided information for, or participated in, the preparation of the responses to these interrogatories, requests for production, and/or requests for admission, and identify the specific interrogatory(s) and request(s) for admission or parts thereof and/or request(s) for which each person provided information. Please include each person's relationship with the Emmett Irrigation District in the identification (e.g. manager of EID, board member of EID, attorney for EID).

ANSWER TO INTERROGATORY NO. 18: Angela Schaer Kaufmann, Andrew J. Waldera, and Scott L. Campbell, all counsel for Emmett Irrigation District; Roy Maxwell, Superintendent of Emmett Irrigation District, and Carla Porath, Secretary for Emmett Irrigation District.

REQUEST FOR ADMISSION NO. 11: Please admit that the water used to power the turbines of the direct-connected pumps at the Black Canyon Dam is discharged back to the Payette River. As used here, the phrase “power the turbines” means to provide the mechanical energy necessary to operate the pumps. The phrase “discharge back to the Payette River” means returned to the Payette River without being put to further use.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: Admitted, with qualification.

INTERROGATORY NO. 19: If your response to Request for Admission No. 1 [sic] is anything but an unqualified admission, please provide a complete explanation of your response including, but not limited to identifying any facts which might support your response.

ANSWER TO INTERROGATORY NO. 19: As a general proposition, the water which is used to power the turbines does return to the Payette River. However, it is difficult if not impossible to determine on a molecule by molecule basis which water returns to the river, which evaporates, and which is pumped into the District’s North Side Canal.

REQUEST FOR PRODUCTION NO. 6: Please provide copies of, or make available for review, all documents supporting your response to Interrogatory No. 19.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: The District has no responsive documents at this time.

REQUEST FOR ADMISSION NO. 12: Please admit that Emmett Irrigation District was a party to the Payette Adjudication.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: Objection. Chapter 14, Title 42, Idaho Code (pertaining to water right adjudications) was significantly amended in 1986 by

the Idaho Legislature, long after the commencement of the Payette Adjudication. *See* 1986 Idaho Session Laws, Ch. 220, 230 and 234. Therefore, the definition of “party” in the context of the Payette Adjudication is not clear to Emmett Irrigation District.

INTERROGATORY NO. 20: If your response to Request for Admission No. 12 is anything but an unqualified admission, please provide a complete explanation of your response including, but not limited to identifying any facts which might support your response.

ANSWER TO INTERROGATORY NO. 20: See Response to Request for Admission Number 12.

REQUEST FOR PRODUCTION NO. 7: Please provide copies of, or make available for review, all claims filed by or on behalf of the Emmett Irrigation District in the Payette Adjudication.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Emmett Irrigation District has attached hereto all existing documents in its possession which are responsive to Request for Production Number 7.

REQUEST FOR PRODUCTION NO. 8: Please provide copies of, or make available for review, any objections or other form of opposition filed by or on behalf of Emmett Irrigation against claims filed by the United States in the Payette Adjudication.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Emmett Irrigation District agrees to make available all existing documents in its possession which are responsive to Request for Production Number 8 for review at the District’s office, 222 East Park Street, Emmett, Idaho 83617, at a time determined by and mutually agreeable to Counsel for both parties.

INTERROGATORY NO. 21: Please identify all water rights that are currently owned or held by Emmett Irrigation District, whether in the form of a license, permit, transfer, decree, or any other document issued by a court or other governmental entity which recognizes or evidences Emmett's ownership or holding of a water right.

ANSWER TO INTERROGATORY NO. 21: The water rights owned or held by Emmett Irrigation District are: 65-23, 65-2004, 65-2080, 65-7832, 65-10491, 65-11412A, 65-12194, 65-18355, and 65-18356.

REQUEST FOR PRODUCTION NO. 9: Please provide copies or make available for review or provide copies of every document identified in Interrogatory No. 21.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Objection. This request for admission is overbroad, in that the only Emmett Irrigation District water right at issue in this subcase is SRBA Claim Number 65-11412A, and it is not necessary that Emmett Irrigation District prove the nature and existence of any of its other water rights in this proceeding. Moreover, Interrogatory Number 21 requests that Emmett Irrigation District identify "water rights", but not particular documents. A wide variety of documents may "recognize" or "evidence" ownership of a water right, and by responding to this Request for Production, Emmett Irrigation District in no way waives its right to prove the nature and existence of its water rights by whatever proof is available. Subject to and without waiving those objections, see the documents attached hereto.

INTERROGATORY NO. 22: Please provide the name, address, and phone number of every person who has served on the Board of Directors of the Emmett Irrigation District since 1980. Also indicate the month and year that each person began service on the board, the month

and year that each person ended service on the board, list any board offices that each person held while serving, and the month and year when that service started and ended.

ANSWER TO INTERROGATORY NO. 22: See Attachment hereto.

REQUEST FOR PRODUCTION NO. 10: Please make available for review or provide copies of the minutes for all Emmett Irrigation District meetings during the period January 1917 through December 1922.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: The responsive documents are attached hereto.

REQUEST FOR PRODUCTION NO. 11: Please make available for review or provide copies of all correspondence between Emmett Irrigation District and the U.S. Bureau of Reclamation or its predecessor the U.S. Reclamation Service for the period January 1912 through December 1925, January 1953 through December 1955, January 1980 through December 1985, and January 1988 through December 1990.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Emmett Irrigation District agrees to make available all available documents in its possession which are responsive to Request for Production Number 11 for review at the District's office, 222 East Park Street, Emmett, Idaho 83617, at a time determined by and mutually agreeable to Counsel for both parties.

REQUEST FOR ADMISSION NO. 13: Please admit that the United States owns, operates and maintains the hydro-pumps (also referred to as direct-connected pumps).

RESPONSE TO REQUEST FOR ADMISSION NO. 13: Denied.

INTERROGATORY NO. 23: If your response to Request for Admission No. 13 is anything but an unqualified admission, please provide a complete explanation of your response including, but not limited to identifying any facts which might support your response.

ANSWER TO INTERROGATORY NO. 23: Emmett Irrigation District is charged, and pays for, any and all improvements or maintenance regarding the hydro pumps at the Black Canyon facility since the hydro pumps are utilized/operated for the exclusive benefit of Emmett Irrigation District, enabling Emmett Irrigation District to exercise its senior water rights without disruption by the operation of the Black Canyon facility.

Moreover, over the course of the past decade Mr. Roy Maxwell of Emmett Irrigation District, and Board members of the District, have been included in the on site inspection process to the extent where it is/was Mr. Maxwell who is/was making the maintenance decisions concerning the work necessary to operate and maintain the hydro pumps. Over the course of the past decade none of Mr. Maxwell's maintenance decisions/suggestions were refused. In fact, the Bureau routinely relies upon Mr. Maxwell's expertise and suggestions concerning the maintenance of the hydro pumps, and the ultimate decisions rendered by the Board concerning maintenance that will be performed as a result of the Board's expenditure decisions.

REQUEST FOR PRODUCTION NO. 12: Please provide copies of, or make available for review, all documents supporting your response to Interrogatory No. 19.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Emmett Irrigation District believes that the reference to Interrogatory 19 is a typographical error, and that the United States meant to refer to Interrogatory Number 23. With that understanding, Emmett Irrigation District agrees to make available all existing documents in its possession which are responsive to Request

for Production Number 14 for review at the District's office, 222 East Park Street, Emmett, Idaho 83617, at a time determined by and mutually agreeable to Counsel for both parties.

REQUEST FOR ADMISSION NO. 13 [Should be 14]: Please admit that the hydro-pumps (also referred to as direct-connected pumps) are located within the power plant (also referred to as the powerhouse) at Black Canyon Dam.

RESPONSE TO REQUEST FOR ADMISSION NO. 1[4]: Admitted.

INTERROGATORY NO. 23 [Should be 24]: If your response to Request for Admission No. 14 is anything but an unqualified admission, please provide a complete explanation of your response including, but not limited to identifying any facts which might support your response.

ANSWER TO INTERROGATORY NO. 2[4]: See Response to Request for Admission No. 14.

REQUEST FOR PRODUCTION NO. 14: Please produce, or make available for review, any documents in your possession or under your control relating to the operation of Black Canyon Dam and/or the hydro-pumps (also referred to as direct-connected pumps).

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: Emmett Irrigation District agrees to make available all existing documents in its possession which are responsive to Request for Production Number 14 for review at the District's office, 222 East Park Street, Emmett, Idaho 83617, at a time determined by and mutually agreeable to Counsel for both parties.

REQUEST FOR PRODUCTION NO. 15: Please produce, or make available for review all correspondence between the Emmett Irrigation District and either the Idaho Department of Water Resources or the United States (specifically the Bureau of Reclamation, the

Department of Justice and Department of Interior's Office of the Solicitor) regarding the Payette Adjudication which is at all related to the filing of claims, or the prospect of filing claims, for the use of water at Black Canyon Dam, including but not limited to the use of water at the hydro-pumps.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15: Emmett Irrigation District agrees to make available all existing documents in its possession which are responsive to Request for Production Number 15 for review at the District's office, 222 East Park Street, Emmett, Idaho 83617, at a time determined by and mutually agreeable to Counsel for both parties.

REQUEST FOR PRODUCTION NO. 16: Please produce, or make available for review, any documents you intend to rely on or may rely on in trial of this matter.

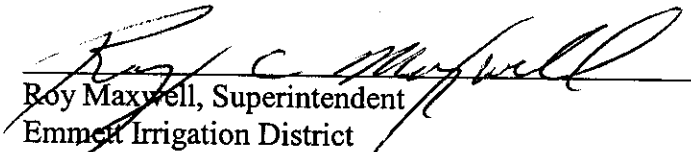
RESPONSE TO REQUEST FOR PRODUCTION NO. 16: Emmett has not yet fully determined which documents it will rely upon in the trial of this matter. In addition to documents already produced, and documents attached hereto, Emmett will supplement this response when it makes that determination.

STATE OF IDAHO)
) ss.
County of Gem)

Roy Maxwell, being first duly sworn, deposes and says:

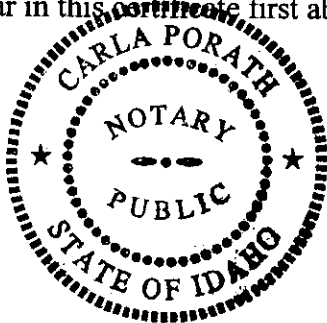
That he is the Superintendent of Emmett Irrigation District, that he has read the foregoing instrument, knows the contents thereof, and believes the contents thereof to be true and correct to the best of his knowledge.

DATED this 23 day of January 2003.


Roy Maxwell, Superintendent
Emmett Irrigation District

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

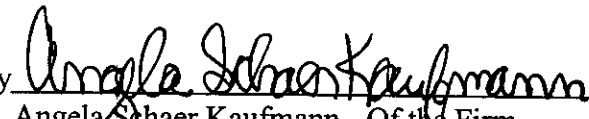
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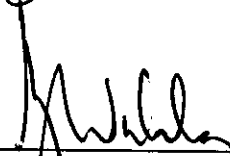



NOTARY PUBLIC for Idaho
Residing at Emmett
Commission Expires 1-19-2007

DATED this 23 day of January 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Angela Schaefer Kaufmann - Of the Firm

By 
Andrew J. Waldera - Of the Firm
Attorneys for Emmett Irrigation District

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

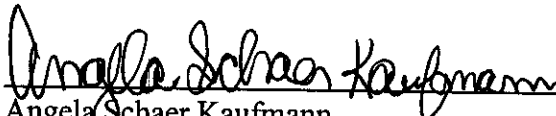
I HEREBY CERTIFY that on the 24 day of January 2003, I caused a true and correct copy of the foregoing EMMETT IRRIGATION DISTRICT'S RESPONSES TO UNITED STATES' SECOND SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION to be served by the method indicated below, and addressed to the following:

David W. Gehlert
Department of Justice
General Litigation Section
999 18th Street, Suite 945
Denver, CO 80202

(☒) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

Director of IDWR
P.O. Box 83720
Boise, Idaho 83702-0098

(☒) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile


Angela Schaer Kaufmann

ATTACHMENTS ARE IN THE LEGAL & REPOSITORY FILES