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Department of Water Resources

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
Andrew J. Waldera, ISB No. 6608
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
19-104.0

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
FIRST SET OF INTERROGATORIES,
REQUESTS FOR ADMISSION, AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO UNITED STATES
BUREAU OF RECLAMATION**

YOU WILL PLEASE TAKE NOTICE that Emmett Irrigation District hereby requires United States Bureau of Reclamation to answer Protestant's First Set of Interrogatories, Requests for Admission, and Requests for Production within fifteen days from the date of service herein, pursuant to the Idaho Rules of Civil Procedure 26(a), 26(b), 33(a), 34(a), and 36(a), and Administrative Order 1.

**EMMETT IRRIGATION DISTRICT'S FIRST SET OF INTERROGATORIES, REQUESTS FOR
ADMISSION, AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO UNITED STATES BUREAU
OF RECLAMATION - 1**

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GENERAL INSTRUCTIONS

A. Definitions and General Instructions

1. The term "United States" refers to the United States Government, its agencies, agents, employees, representatives, investigators, consultants, and attorneys.
2. The term "Emmett Irrigation District" refers to the Emmet Irrigation District, its agents, employees, representatives, investigators, consultants, and attorneys.
3. The term "1921 contract" refers to the November 18, 1921 contract between the United States of America, acting through the Secretary of the Interior, and pursuant to the Federal Reclamation Laws, and the Emmett Irrigation District.
4. The term "document" shall mean any kind of written, printed, typed, graphic, electronic, computerized, or photographic matter of any kind or nature including, but not limited to, statements however produced or reproduced, and all mechanical and electronic sound recordings and written transcripts thereof, however produced or reproduced, whether in your control or not, and including, without limitation, originals, all file copies, all other copies no matter how or by whom prepared, and all drafts of such documents whether used or not.
5. The term "identify" when used with respect to a document or the description or identification of a document, shall be deemed to request the nature and subject matter of the document; the date thereof; the title or name thereof; the name, address, and job title or job capacity of the person who prepared it or who has knowledge of it; the name, address, and job title or job capacity of the recipient thereof; and the Bates number or other identifier as applicable.

6. The term "identify" when used with respect to a person shall be deemed to request the person's full name, job title, last known business and residence addresses, and respective telephone numbers.

7. The term "identify" when used with respect to oral communications shall be deemed to request whether said communication was in person or by telephone, an identification of each person who participated in or heard any part of said communication, and the substance of what was said by each person who participated in said communication.

8. In answering these interrogatories and requests for production, please furnish all information which is known or available to you, including, but not limited to, information known of your personal knowledge, information obtainable by the diligent search of sources of information available to you, and all information in the possession of, or available to, any person or persons acting on your behalf or under your control or under the control of any of your attorneys, agents, employees, experts, independent contractors, investigators, representatives, or others with whom you have a relationship and from whom you are capable of deriving information, documents, or material.

9. Any interrogatory which may be answered in whole or in part by reference to documents is deemed to request those responsive documents.

10. If any documents requested by a Request for Production or which should be produced in response to an interrogatory cannot be produced in full, you are required to produce them to the fullest extent possible, specifying clearly the reasons for your inability to produce the remainder and stating whatever information, knowledge, or belief you have concerning the unproduced portions.

11. If any of the documents requested herein were at one time in existence but are no longer in existence, please so state, specifying for each document:

- (a) The type of document;
- (b) The types of information contained therein;
- (c) The date upon which it ceased to exist;
- (d) The circumstances under which it ceased to exist;
- (e) The identity of all persons having knowledge of the circumstances under which it ceased to exist; and

- (f) The identity of each person having knowledge of the contents thereof.

12. With respect to any documents called for by this request but withheld due to any claim or privilege, list for each such document:

- (a) The paragraph to which the document is otherwise responsive;
- (b) Its title and general subject matter;
- (c) Its date;
- (d) The name(s) and title(s) of its author or preparer;
- (e) The name(s) and title(s) of the person(s) for whom it was prepared and all persons to whom it was sent or shown; and
- (f) The nature of the privilege claimed.

13. If you assert a privilege as to a portion of any category of the materials described, please produce the remainder of that category as to which you do not assert a privilege.

14. Please produce the documents and things for inspection and copying on the 30th day of December 2002, at 9:00 a.m. at the law offices of Moffatt, Thomas, Barrett, Rock &

Fields, Chartered, 101 S. Capitol Blvd., 10th Floor, Boise, Idaho, 83702, or at such other time and place as may be mutually agreed by the parties. Inspection and copying will be conducted by the undersigned attorneys or their agents and will continue from time to time and from day to day until completed.

15. Each document requested to be produced shall be provided in a manner which preserves its sequential relationship with other documents being produced and shall include the file folder and folder tabs associated with its file location. If the file location is not apparent on the folder and tabs, the document shall be accompanied by information indicating from where the file was taken and such additional information as is necessary to enable the Applicants to determine the document's original pre-production location.

B. Instructions Regarding Supplementation

1. • These interrogatories, requests for admission, and requests for production are deemed continuing in nature, and your responses are to be supplemented as additional information and knowledge becomes available or known to you as provided in Rule 26(e) of the Idaho Rules of Civil Procedure.

2. Where knowledge or information in the possession of a party is requested, such request includes information and knowledge either in your possession, under your control, within your dominion, or available to you or which becomes subject to your possession, control, or dominion regardless of whether this information is in your personal possession or is possessed by your agents, attorneys, servants, employees, independent contractors, representatives, insureds, or others with whom you have a relationship and from whom you are capable of deriving information, documents, or materials.

**INTERROGATORIES, REQUESTS FOR ADMISSION,
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

REQUEST FOR ADMISSION NUMBER 1: Please admit that the United States entered into a contract with the Emmett Irrigation District on November 18, 1921, arranging for the construction of Black Canyon Dam.

REQUEST FOR PRODUCTION NUMBER 1: Please produce each and every document which supports or tends to support, in whole or in part, your response to Request for Admission Number 1.

REQUEST FOR ADMISSION NUMBER 2: Please admit that prior to the 1921 contract between the United States and the Emmett Irrigation District, the Emmett Irrigation District owned and operated a dam and diversion works that were subsequently replaced by the Black Canyon Dam and diversion works pursuant to the terms of the 1921 contract.

INTERROGATORY NUMBER 1: If your response to Request for Admission Number 2 is anything other than an unqualified admission, please set forth each and every fact of which you are aware which supports or tends to support, in whole or in part, your response to Request for Admission Number 2.

REQUEST FOR PRODUCTION NUMBER 2: Please produce each and every document which supports or tends to support, in whole or in part, your response to Request for Admission Number 2 and Interrogatory Number 1.

REQUEST FOR ADMISSION NUMBER 3: Please admit that the United States' construction of the Black Canyon Dam was subject to the approval of the Emmett Irrigation District and was also conditioned upon Emmett Irrigation District receiving, in perpetuity, the full measure of its senior appropriative water rights as memorialized by the 1921 contract.

INTERROGATORY NUMBER 2: If your response to Request for Admission Number 3 is anything other than an unqualified admission, please set forth each and every fact of which you are aware which supports or tends to support, in whole or in part, your response to Request for Admission Number 3.

REQUEST FOR PRODUCTION NUMBER 3: Please produce each and every document which supports or tends to support, in whole or in part, your response to Request for Admission Number 3 and Interrogatory Number 2.

REQUEST FOR ADMISSION NUMBER 4: Please admit that the construction of Black Canyon Dam required the movement of Emmett Irrigation District's original point of diversion.

INTERROGATORY NUMBER 3: If your response to Request for Admission Number 4 is anything other than an unqualified admission, please set forth each and every fact of which you are aware which supports or tends to support, in whole or in part, your response to Request for Admission Number 4.

REQUEST FOR PRODUCTION NUMBER 4: Please produce each and every document which supports or tends to support, in whole or in part, your response to Request for Admission Number 4 and Interrogatory Number 3.

REQUEST FOR ADMISSION NUMBER 5: Please admit that as a result of that moved point of diversion, the United States installed hydro-pumps at the Black Canyon facility to pump water into Emmett Irrigation District's North Side Canal.

INTERROGATORY NUMBER 4: If your response to Request for Admission Number 5 is anything other than an unqualified admission, please set forth each and every fact of which you are aware which supports or tends to support, in whole or in part, your response to Request for Admission Number 5.

REQUEST FOR PRODUCTION NUMBER 5: Please produce each and every document which supports or tends to support, in whole or in part, your response to Request for Admission Number 5 and Interrogatory Number 4.

REQUEST FOR ADMISSION NUMBER 6: Please admit that the hydro-pumps needed to pump water into Emmett Irrigation District's North Side Canal, and the water rights necessary to operate those pumps, were prerequisites to Emmett Irrigation District's approval of the United States' actions in moving Emmett Irrigation District's point of diversion to build the Black Canyon facility pursuant to the 1921 contract.

INTERROGATORY NUMBER 5: If your response to Request for Admission Number 6 is anything other than an unqualified admission, please set forth each and every fact of which you are aware which supports or tends to support, in whole or in part, your response to Request for Admission Number 6.

REQUEST FOR PRODUCTION NUMBER 6: Please produce each and every document which supports or tends to support, in whole or in part, your response to Request for Admission Number 6 and Interrogatory Number 5.

REQUEST FOR ADMISSION NUMBER 7: Please admit that without the hydro-pumps and the water needed to operate them, the current location/operation of Black Canyon Dam makes it impossible for Emmett Irrigation District to divert water to its North Side Canal without additional costs and expenses.

INTERROGATORY NUMBER 6: If your response to Request for Admission Number 7 is anything other than an unqualified admission, please set forth each and every fact of which you are aware which supports or tends to support, in whole or in part, your response to Request for Admission Number 7.

REQUEST FOR PRODUCTION NUMBER 7: Please produce each and every document which supports or tends to support, in whole or in part, your response to Request for Admission Number 7 and Interrogatory Number 6.

REQUEST FOR ADMISSION NUMBER 8: Please admit that the amount of water needed to operate the hydro-pumps is 220 cubic feet per second.

INTERROGATORY NUMBER 7: If your response to Request for Admission Number 8 is anything other than an unqualified admission, please set forth each and every fact of which you are aware which supports or tends to support, in whole or in part, your response to Request for Admission Number 8.

REQUEST FOR PRODUCTION NUMBER 8: Please produce each and every document which supports or tends to support your response to Request for Admission Number 8 and Interrogatory Number 7.

REQUEST FOR ADMISSION NUMBER 9: Please admit that the United States Bureau of Reclamation, is at most, the owner of legal title to the water rights necessary to operate the hydro-pumps needed to pump water into Emmett Irrigation District's North Side Canal.

INTERROGATORY NUMBER 8: If your response to Request for Admission Number 9 is anything other than an unqualified admission, please set forth each and every fact of which you are aware which supports or tends to support, in whole or in part, your response to Request for Admission Number 9.

REQUEST FOR PRODUCTION NUMBER 9: Please produce each and every document which supports or tends to support, in whole or in part, your response to Request for Admission Number 9 and Interrogatory Number 8.

REQUEST FOR ADMISSION NUMBER 10: Please admit that the hydro-pump operation water rights are held by the United States for the benefit of Emmett Irrigation District, in perpetuity, to fulfill the United States' contractual obligation to supply and in no way impair, the senior appropriation rights of Emmett Irrigation District.

INTERROGATORY NUMBER 9: If your response to Request for Admission Number 10 is anything other than an unqualified admission, please set forth each and every fact of which you are aware which supports or tends to support, in whole or in part, your response to Request for Admission Number 10.

REQUEST FOR PRODUCTION NUMBER 10: Please produce each and every document which supports or tends to support, in whole or in part, your response to Request for Admission Number 10 and Interrogatory Number 9.

REQUEST FOR ADMISSION NUMBER 11: Please admit that the 220 cubic feet per second of water used to operate the hydro-pumps is used solely to enable Emmett Irrigation District to exercise its senior water rights and divert water into its North Side Canal as required by the 1921 contract.

INTERROGATORY NUMBER 10: If your response to Request for Admission Number 11 is anything other than an unqualified admission, please set forth each and every fact of which you are aware which supports or tends to support, in whole or in part, your response to Request for Admission Number 11.

REQUEST FOR PRODUCTION NUMBER 11: Please produce each and every document which supports or tends to support, in whole or in part, your response to Request for Admission Number 11 and Interrogatory Number 10.

REQUEST FOR ADMISSION NUMBER 12: Please admit that no agreement subsequent to the original 1921 contract between the United States and Emmett Irrigation District has ever altered the United States' obligation to provide Emmett Irrigation District with the full measure of its senior water right in perpetuity by whatever means necessary.

INTERROGATORY NUMBER 11: If your response to Request for Admission Number 12 is anything other than an unqualified admission, please set forth each and every fact of which you are aware which supports or tends to support, in whole or in part, your response to Request for Admission Number 12.

REQUEST FOR PRODUCTION NUMBER 12: Please produce each and every document which supports or tends to support, in whole or in part, your response to Request for Admission number 12 and Interrogatory Number 11.

REQUEST FOR PRODUCTION NUMBER 13: Please produce any and all agreements between the United States and Emmett Irrigation District relating to any water appropriation or water storage in basin 65, including but not limited to, the original 1921 contract, the November 6, 1923 contract, the June 17, 1931 contract, the June 30, 1932 contract and the October 4, 1955 contract.

INTERROGATORY NUMBER 12: Please identify the lay witnesses you may call to testify at the trial of this matter.

INTERROGATORY NUMBER 13: Please identify the expert witnesses you may call to testify at the trial of this matter. In addition to the identity of any expert witness you may call, Emmett Irrigation District seeks:

- a) The subject matter upon which each expert is expected to testify;
- b) The substance of the opinions to which each expert is expected to testify;
- c) The underlying facts and data upon which each expert opinion is based.

REQUEST FOR PRODUCTION NUMBER 14: Please produce the curriculum vitae of each person identified in your response to Interrogatory Number 13.

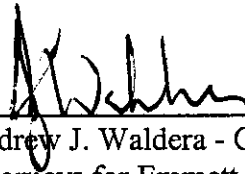
REQUEST FOR PRODUCTION NUMBER 15: Please produce each and every document upon which you relied in preparing your response to Interrogatory Number 13.

DATED this 4th day of December 2002.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Angela Schaefer Kaufmann
Angela Schaefer Kaufmann - Of the Firm

By



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

CERTIFICATE OF SERVICE

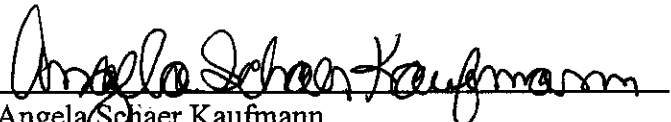
I HEREBY CERTIFY that on the ^{28th} ~~27th~~ day of December, 2002, I caused a true and correct copy of the foregoing EMMETT IRRIGATION DISTRICT'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO UNITED STATES BUREAU OF RECLAMATION to be served by the method indicated below, and addressed to the following:

Director, IDWR
PO Box 83720
Boise, ID 83720-0098

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

David W. Gehlert, Esq.
United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

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


Angela Schaer Kaufmann