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Department of Water Resources

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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 Nos. 65-11412 and 65-11412A

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

Emmett Irrigation District hereby responds to the United States' First Set of
Interrogatories and Requests for Production.

These responses are provided in accordance with the Rules of Procedure and
Administrative Order 1.

**EMMETT IRRIGATION DISTRICT'S RESPONSES TO UNITED STATES' FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION - 1**

GENERAL OBJECTIONS

1. Emmett Irrigation 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 Emmett Irrigation District at this time. Emmett Irrigation 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 Emmett Irrigation District's right to use such evidence as may later be discovered or evaluated in later discovery or to present at the hearing on this matter,

2. Emmett Irrigation District objects to the definitions and instructions to the extent they purport to require discovery responses beyond those required under the Idaho Rules of Civil Procedure and/or Administrative Order 1. These responses are provided in accordance with the Idaho Rules of Civil Procedure and the Administrative Order 1 irrespective of any definitions and instructions that may accompany the discovery requests to which this response is given.

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 interrogatory 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. Emmett Irrigation 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 may not necessarily be repeated for each request to which it applies. Emmett Irrigation 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 Emmett Irrigation District has responded to any discovery request or part thereof should not be taken as an admission that Emmett Irrigation District accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that Emmett Irrigation District has responded to all or part of a request for admission is not intended to and shall not be construed to be a waiver by Emmett Irrigation District of all or part of any objection to other requests for admission. Emmett Irrigation District's answers to any discovery requests herein do not constitute a waiver of Emmett Irrigation District's right to object to any future additional or supplemental discovery requests regarding the same or similar matters.

RESPONSES TO FIRST SET OF INTERROGATORIES AND REQUESTS FOR ADMISSION

INTERROGATORY NO. 1:

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 such person provided information.

ANSWER TO INTERROGATORY NO. 1: Those involved in the preparation of these responses included Scott L. Campbell, Angela Schaer Kaufmann, Andrew J. Waldera, Carla Stanley, and Roy Maxwell.

INTERROGATORY NO. 2:

Identify each person who, to your knowledge, has personal knowledge of the facts alleged in your objection and provide a complete and accurate description of each such person's knowledge as it relates to the facts alleged in your objection.

ANSWER TO INTERROGATORY NO. 2: Objection. This interrogatory is overbroad and calls for information protected by the attorney-client privilege and the work product doctrine. Emmett Irrigation District cannot know every person with knowledge of the facts alleged, nor could the District provide an accurate description of that knowledge. Subject to and without waiving those objections, the Board members and Roy Maxwell of the Emmett Irrigation District provided their general knowledge of the District and its facilities. Emmett Irrigation District will supplement this response in accordance with the Idaho Rules of Civil Procedure and the Trial Scheduling Order of December 3, 2002.

INTERROGATORY NO. 3:

Identify all witnesses, regardless of their relationship to Emmett Irrigation District, that Emmett Irrigation District intends to rely on to establish its objection(s) at trial in this case, and provide a summary of the testimony that the witness is expected to give.

ANSWER TO INTERROGATORY NO. 3: Objection. This interrogatory calls for information protected by the attorney-client privilege and the work product doctrine. Subject to and without waiving those objections, Emmett Irrigation District is still making these

determinations and will supplement this response in accordance with the Idaho Rules of Civil Procedure and the Trial Scheduling Order of December 3, 2002.

INTERROGATORY NO. 4:

Identify each and every person who has reviewed or investigated the allegations set forth in your objections and state in detail:

- a. the date of each such person's review or investigation;
- b. a description of each such person's review or investigation;
- c. the reason each such person's review or investigation was made;
- d. whether any record, report, or other documentation of each such person's review or investigation was made.

ANSWER TO INTERROGATORY NO. 4: Objection. This interrogatory is overbroad, calls for legal conclusions, and calls for information protected by the attorney-client privilege and the work product doctrine. Subject to and without waiving those objections, those reviewing or investigating the allegations set forth in our objections included the board members of the Emmett Irrigation District, Roy Maxwell, Scott L. Campbell, and Angela Schaer Kaufmann.

a. Emmett Irrigation District executed its objections on December 7, 2001, and January 18, 2002. Discussions relating to these objections and review of the objections would have taken place in the weeks immediately leading up to and perhaps following the objections.

b. The board members of the Emmett Irrigation District reviewed and concurred with the objections based upon their personal knowledge of the District and its facilities.

c. The investigation is still ongoing, and Emmett Irrigation District will supplement this response in accordance with the Idaho Rules of Civil Procedure and the Trial Scheduling Order of December 3, 2002.

d. No unprivileged documentation of review was made other than signed objections.

REQUEST FOR PRODUCTION NO. 1:

Please make available for review or provide copies of all records, reports, and other documentation identified in Interrogatory No. 4.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Objection. This request calls for legal conclusions and material protected by the attorney-client privilege and the work product doctrine. See response to Interrogatory Number 4.

INTERROGATORY NO. 5:

Identify each and every person contacted or consulted by you, your attorney(s), or anyone else on your behalf, as an expert or consultant (whether in-house or staff expert or consultant or an outside expert or consultant) in any field, in any manner whatsoever, with respect to these claims, and provide the following information:

- (a) The name, address, occupation, job title, and field of expertise for each such person contacted or consulted.
- (b) The date of first contact or consultation with that person and the name of each person contacting him or her on your behalf.
- (c) The dates of all subsequent contacts, communications, meetings, or consultations with that person, and the names of all persons present at such contacts, communications, meetings, or consultations.

- (d) Identify any reports that were made by the consultant or the person contacted, and
indict whether the report was written or oral.

ANSWER TO INTERROGATORY NO. 5: Objection. This interrogatory calls for legal conclusions and information protected by the attorney-client privilege and the work product doctrine. Subject to and without waiving those objections, this interrogatory exceeds the scope of discovery pursuant to Idaho Rule of Civil Procedure 26(b)(4). Identifying "consultants" is protected work product. Emmett Irrigation District will identify any expert witness used, if any, in accordance with the Idaho Rules of Civil Procedure and the Trial Scheduling Order of December 3, 2002.

REQUEST FOR PRODUCTION NO. 2:

Please make available for review or provide copies of all written reports identified in Interrogatory No. 5.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: See response to Interrogatory Number 5.

INTERROGATORY NO. 6:

Identify any individual(s) that you intend to call as expert witnesses in this matter, setting forth for each:

- a) The name and address of each individual.
- b) A summary of the expected testimony
- c) The opinions that the individual is expected to give and the basis for each of those opinions.

ANSWER TO INTERROGATORY NO. 6: See response to Interrogatory Number 3.

INTERROGATORY NO. 7:

Identify the specific action(s) taken on the part of Emmett Irrigation District, if any, which you contend constitute Emmett Irrigation District's use of water in connection with the direct-connected pumps at Black Canyon Dam (also referred to as hydro pumps; hereinafter "direct-connected pumps").

ANSWER TO INTERROGATORY NO. 7: Objection. This interrogatory is vague and unclear. Subject to and without waiving those objections, the hydro pumps are the underlying mechanism that allow Emmett Irrigation District to exercise its senior water right. The water demanded by Emmett Irrigation District directly dictates the amount of water needed to drive the hydro pumps to meet that demand. The demands of Emmett Irrigation District dictate when and how the hydro pumps are operated.

INTERROGATORY NO. 8:

Identify the specific action(s) on the part of Emmett Irrigation District, if any, which you contend constitute operating or maintaining the direct-connected pumps.

ANSWER TO INTERROGATORY NO. 8: Objection. The term "operate" is vague and ambiguous. Subject to and without waiving those objections, Emmett Irrigation District's fluctuating demand for water dictates when and how the hydro pumps operate.

REQUEST FOR PRODUCTION NO. 3:

Please make available for review or provide copies of any documents or information that will be relied upon to establish that Emmett Irrigation District should either hold or share title to the direct-connected pump rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Objection. This request calls for information protected by the attorney-client privilege and the work product doctrine. Further, response to this request would be premature since Emmett Irrigation District has not yet determined what it will rely upon at trial. Subject to and waiving those objections, Emmett Irrigation District will rely upon the various contracts it entered into with the United States concerning the Black Canyon facility. Emmett Irrigation District will supplement this response in accordance with the Idaho Rules of Civil Procedure and the Trial Scheduling Order of December 3, 2002.

REQUEST FOR PRODUCTION NO. 4:

Please make available for review or provide copies of the minutes for all Emmett Irrigation District meetings during the period January 1952 through December 1956.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Please see attached.

REQUEST FOR PRODUCTION NO. 5:

Please make available for review or provide copies of the minutes for all Emmett Irrigation District meetings during the period January 19[82] through December 1986.

RESPONSE FOR PRODUCTION NO. 5: Based upon discussions with United States' counsel, the dates of concern are January 1982 through December 1986. Please see attached.

INTERROGATORY NO. 9:

If your response to Request for Admission No. 1 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. 9: Based upon the United States' SRBA Notice of Claim dated November 16, 1988 (Identification Number A65-11412), the hydro pump "power" is used to lift 330 cfs from Black Canyon Reservoir to Emmett Irrigation District's North Side Canal. The water pumped into the canal is then used for irrigation. Moreover, Emmett Irrigation District's fluctuating demand for irrigation water directly influences the use of water powering the hydro pumps.

INTERROGATORY NO. 10:

If your response to Request for Admission No. 2 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. 10: It is true that on January 4, 1989, a partial decree was entered in the Payette adjudication granting the United States a power water right concerning the hydro pumps. However, the stipulation underlying the partial decree and the decree itself were issued well after the commencement of the superceding Snake River Basin Adjudication ("SRBA").

INTERROGATORY NO. 11:

If your response to Request for Admission No. 3 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. 11: Objection. The term "voice opposition" is vague and ambiguous. Subject to and without waiving those objections, while it appears that no objections were filed to claim number 65-11412 in the Payette Adjudication, Emmett

Irrigation District would not have agreed that the United States should be the full legal and beneficial owner of that right.

INTERROGATORY NO. 12:

If your response to Request for Admission No. 4 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. 12: Objection. The term “challenge” is vague, and it is not known whether that word is used as it is specifically used in Administrative Order 1. Subject to and without waiving that objection, Emmett Irrigation District is “challenging” the legality of the United States’ title ownership to the hydro pump rights in this adjudication.

INTERROGATORY NO. 13:

If your response to Request for Admission No. 5 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. 13: The United States operates and maintains the Black Canyon diversion facilities for the perpetual benefit of the Emmett Irrigation District and its senior appropriative water rights in the Payette River. As for the water flow used to operate the hydro pumps, that flow is directly dictated by Emmett Irrigation District’s water demand at the time.

INTERROGATORY NO. 14:

If your response to Request for Admission No. 6 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. 14: Objection. This interrogatory calls for information protected by the attorney-client privilege and the work product doctrine. Further, this Request for Admission and corresponding Interrogatory ask for legal conclusions concerning one of the essential issues of this litigation. This is an issue that the Court must determine.

INTERROGATORY NO. 15:

If your response to Request for Admission No. 7 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. 15: This request is impossible for Emmett Irrigation District to address in a knowledgeable manner. It is the United States that operates and maintains the Black Canyon diversion facility and its engineers who possess the expert knowledge concerning the pressure head needed to operate the hydro pumps.

INTERROGATORY NO. 16:

If your response to Request for Admission No. 8 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. 16: Whereas Emmett Irrigation District is entitled to the full measure of its senior appropriative water right and can apply it all to the lands

within the District, the state water bank also allows Emmett Irrigation District to lease excess water not needed within the District to others who own lands elsewhere.

INTERROGATORY NO. 17:

If your response to Request for Admission No. 9 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. 17: Objection. This request is vague and ambiguous. Subject to and without waiving that objection, the water stored in Cascade and Deadwood reservoirs is stored by the United States Bureau of Reclamation. All water diverted by Emmett Irrigation District at the Black Canyon facility is diverted into either the North or South Side Canals; however, due to the state water bank, not all of Emmett Irrigation District's appropriative right is necessarily diverted at the Black Canyon facility.

INTERROGATORY NO. 17:

Please identify any documents that, in your contention, reflect, describe, or otherwise identify the parties' intentions regarding the contracts identified in Request for Admission No. 10.

ANSWER TO INTERROGATORY NO. 17: Objection. This interrogatory is overbroad and calls for information protected by the attorney-client privilege and the work product doctrine. Subject to and without waiving those objections, the investigation is ongoing, but at this time Emmett Irrigation District is relying upon the contracts in its possession. Emmett Irrigation District reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure and the Trial Scheduling Order of December 3, 2002.

REQUEST FOR PRODUCTION NO. 6:

Please make available for review or provide copies of any documents identified in your response to Interrogatory No. 17.

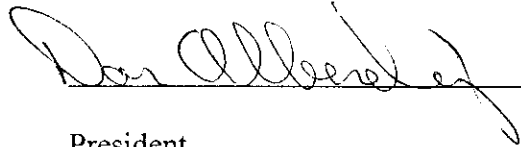
RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Please see attached.

STATE OF IDAHO)
) ss.
County of Gem)

Dar Olberding, Being first duly sworn, deposes and
says:

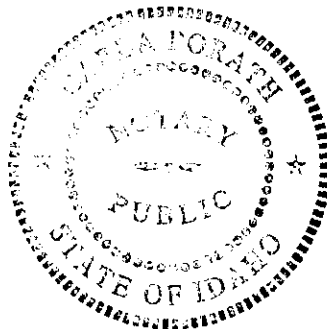
That he is the President of Emmett Irrigation District, that he has read the foregoing instrument, knows the contents thereof, and believes the contents thereof to be true and correct to the best of his knowledge.

DATED this 24 day of December 2002.



President
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.



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

DATED this 26th day of December 2002.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell - Of the Firm
Attorneys for Emmett Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th 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
999 18th Street, Suite 945, North Tower
Denver, CO 80202

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

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