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Department of Water Resources

Attorneys for Black Canyon 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 No. 65-2900

**MEMORANDUM IN SUPPORT
OF OBJECTION TO THE
DIRECTORS REPORT**

COMES NOW the Black Canyon Irrigation District, Objector, and files this Memorandum in support of its Objection to the Directors Report listing the limitation of Water Right No. 65-2900 of the Black Canyon Irrigation District to 51,332 acres.

FACTS

Black Canyon Irrigation District is an irrigation district organized under the laws of the State of Idaho and is the possessor of Water Right No. 65-2900. This water right covers the Tunnel No. 2 Drain which is tributary to the Tunnel No. 7 Wasteway of the Black Canyon Dam and waters of the Payette River are the waters to be diverted under this Water Right in an amount of 75,600 CFS, 16,344.80 AFY. The point of diversion contained in the Water Right is correct.

The Director of the Idaho Department of Water Resources recommended water rights acquired under state law concerning Water Right No. 65-2900, as above stated, with a limitation

that the water diverted under said water right was "limited to the irrigation of 51,332 acres within the boundaries of the Black Canyon Irrigation District in a single irrigation season".

The Directors Report is based upon Water Right 65-2900.

The Black Canyon Irrigation District timely objected to the Directors Report and the acreage limitation contained therein.

The Black Canyon Irrigation District has a contract with the Bureau of Reclamation concerning the total acres within the Black Canyon Irrigation District that may be irrigated within a single irrigation season, the total acreage pursuant to that agreement to be irrigated by the Black Canyon Irrigation District is 53,200.

ARGUMENT

The license issued to the Black Canyon Irrigation District was issued at a time when certain properties of owners within the Black Canyon Irrigation District had been condemned by the United States of America for the purpose of constructing Interstate Highway 84 which runs in a generally easterly-westerly direction across Southern Idaho. The then management of the Black Canyon Irrigation District estimated the loss of acreage within the District as a result of the condemnation of the United States of America and arrived at a resulting figure of 51,332 acres remaining within the District that were irrigated. This is the origin of the acreage number 51,332 acres; this number was in error.

The Black Canyon Irrigation District undertook an assessment of the acreage being irrigated by it pursuant to the Snake River Basin Adjudication; the actual measurements showed that Black Canyon Irrigation District was and had been irrigating a total of in excess of 55,000 acres, even after the loss of the lands condemned by the United States of America. The Board of Directors of the Black Canyon Irrigation District had to undertake the onerous task of denying water for the irrigation of almost 2,000 acres within the Black Canyon Irrigation District which

had historically been irrigated in order to arrive at the contract number of 53,200 acres, which the Bureau of Reclamation was enforcing. Mr. David Tuthill of the Idaho Department of Water Resources attended the annual meeting where the Board of Directors undertook to inform its users of the fact that acres were going to be dried up and the manner and fashion in which this would take place.

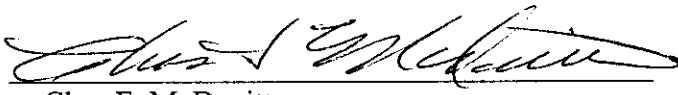
The water obtained under Water Right No. 65-2900 is put into the canal and waterway system of the Black Canyon Irrigation District and commingled with the water utilized by the Black Canyon Irrigation District pursuant to Right No. 65-2433. There is no possibility of measuring the water to limit its utilization on any specific 51,332 acres—compliance with the Directors Report is impossible, enforcement of the Directors Report is impossible—the inclusion of the recommended acreage limitation contained in the Directors Report within a decree of this Court would result in an Order that in effect would be unenforceable.

LEGAL AUTHORITY

The Idaho Supreme Court and Court of Appeals of the State of Idaho have held that it will not give a statute an interpretation which would render it a nullity (119 Idaho 444, 807 P.2d 1282 *State v. Nelson*; 135 Idaho 641, 22 P.3d 116). The Directors Rep[ort] results in an interpretation that would result in an Order in contravention of these decisions.

Respectfully submitted this 3rd day of February, 2003.

MCDEVITT & MILLER LLP

By: 
Chas F. McDevitt
Attorneys for Black Canyon Irrigation District

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of February, 2003, I forwarded true and correct copies of the foregoing *Memorandum in Support of Objection to Directors Report*, via the method(s) indicated below, to the following:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
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Idaho Department of Water Resources
Document Depository
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Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, Idaho 83711-4449

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United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

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Dated this 3rd day of February, 2003.

