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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.: SEE EXHIBIT A**
)
) **JOINT RESPONSE TO CITY OF**
) **POCATELLO'S MOTION TO**
) **AMEND OBJECTIONS**
)
)

COME NOW, American Falls Reservoir District #2, A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal
Company, and Twin Falls Canal Company (for purposes of this response collectively referred to
as the "Coalition"), by and through counsel of record, and submit this *Joint Response to the City*
JOINT RESPONSE TO CITY OF POCATELLO'S MOTION TO AMEND OBJECTION

of Pocatello's Motion to Amend Objections, in the above-captioned subcases. For the following reasons, the Court should deny Pocatello's motion to amend its objection.

The Director's Report for Basin 01 was originally filed with the Court by the Department in May, 2006, with objections due by October 6, 2006. Pocatello failed to file any timely objections to the above-captioned water rights, consciously deciding no objections were necessary. On December 21, 2006, the Department filed an Amended Director's Report on these water rights – an action that is subject to challenge by the Coalition in these subcases. Objections to the Amended Director's Report were due April 20, 2007. Through the Amended Director's Report, the Department added a remark addressing certain provisions from the Foster Decree (for purposes of this response the "Minidoka Credit"), but *did not change any other element of the above-captioned water rights*. At that time, Pocatello filed objections to these water rights for a limited purpose. However, ***Pocatello only objected to the Minidoka Credit remark***. As before, Pocatello did not object to any of the other, unchanged, elements of the water rights. In other words, Pocatello has had, and failed to take advantage of, two opportunities (albeit one subject to legal challenge) to file objections to the elements of the water rights. Now, nearly two-years after the water rights were originally recommended, Pocatello seeks to "include factual issues not previously raised" in its objections. *Motion* at 1.

In its motion to participate, previously granted by this Court, Pocatello assured the Court and parties that it would agree "to be *limited to the issues previously identified* by the claimants and objectors to this matter." *Motion to Participate* at 2 (emphasis added); *Memorandum in Support of Motion to Participate* at 5 ("Pocatello agrees to be limited to the issues raised by other parties to this matter") (emphasis added). Notwithstanding these promises, Pocatello now seeks to "include factual issue not previously raised." Not only did Pocatello fail to raise these

issues in its prior objection, but, the issues raised in Pocatello's proposed objections *have not been raised by any objectors in this matter*. In other words, Pocatello is seeking to expand the scope of these subcases and add issues to these proceedings, in stark contrast to its prior promises.

Pocatello asserts that its proposed objections will not prejudice the parties in this matter. Such a claim overlooks the fact that, should Pocatello's motion be granted, existing objections to the water rights will be greatly expanded and will significantly increase the time and expense imposed upon the Claimant who will be forced to defend against these new factual issues, issues that were not timely raised as provided by the objection procedure under Idaho law.

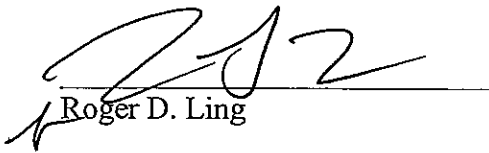
No justification for this late filing is offered other than to say that Pocatello has "additional counsel" that has "advised" Pocatello to "broaden its objections." *Motion* at 1. Hiring additional counsel does not justify expanding the issues before the Court and increasing the time and expense necessary for the claimants to defend their water rights – especially where the objector has specifically chosen not to challenge these same elements on two separate occasions.

Pocatello has already been afforded two opportunities to object to these water rights. Pocatello failed to timely file objections to the originally recommended elements of these water rights. Furthermore, when Pocatello finally filed an objection to these water rights, it limited that objection to the specific changes imposed by the Amended Director's Report – namely, the Minidoka Credit remark. Notwithstanding this second opportunity to object to these water rights, brought about by the Department's questionable filing of the Amended Director's Report, Pocatello still failed to challenge any of the original elements of the water rights. The Court should not now, nearly 2-years after the fact, allow Pocatello to piggy back its untimely

objections to the original elements onto its limited objection relative to the Minidoka Credit language. Instead, the Court should hold Pocatello to the promises it previously made in these subcases and limit Pocatello's objections to the issue that it originally identified. This is especially the case here, where Pocatello has assured the Court and parties that its participation will not expand the issues before the Court. As such, Pocatello's motion should be denied.

DATED this 22nd day of April, 2008.

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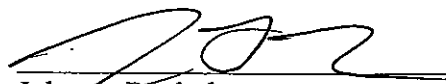
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CERTIFICATE OF MAILING

I certify that on April 22, 2008, I mailed the original and copies of the foregoing motion to the following persons:

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EXHIBIT A

SUBCASES:

01-00004
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