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JUL 24 2008

DEPARTMENT OF
WATER RESOURCES

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Attorney for Big Wood Canal Company

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	)	Subcase Nos. 37-00494, 37-00495,
	)	37-00577BU, 37-00577BV, 37-00657B,
	)	37-00833K, 37-02623
Case No. 39576	)	
	)	RESPONSE TO
	)	MOTION TO DISMISS OBJECTIONS
	)	AND REQUEST FOR ATTORNEY FEES
	)	

COMES NOW, BIG WOOD CANAL COMPANY, by and through its attorney of record, Craig D. Hobdey, and responds to the Motions to Dismiss Objections in the above-entitled matters.

1. The Motions to Dismiss should be denied in their entirety.
2. BWCC is not collaterally attacking a Department of Water Resources determination. The determination made by the Department of Water Resources was with the understanding that the place of use, point of diversion and nature of use would be amended to include the conditions set forth in Exhibit F of the Affidavit of Michael Creamer. Specifically that plans for pumping and measuring devices would be supplied to BWCC office for approval prior to construction and that diversions from

RESPONSE TO MOTION TO DISMISS OBJECTIONS
AND REQUEST FOR ATTORNEY FEES

Page 1 of 3

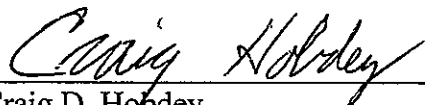
the Big Wood River to the Hiawatha Canal Company would be limited to irrigation needs. This is more than was requested and recommended in the SRBA and therefore BWCC has not had an opportunity to challenge what has been recommended in the SRBA.

3. Furthermore the application and response relied upon by the moveants, pursuant to the Affidavit of Michael Creamer (Exhibit C) only include water rights no. 37-577BN, 37-0494, 37-00495, and 37-0833K. The other water rights, are not mentioned in the transfer. However, the moveants seem to believe that anytime a transfer was applied and granted by the Department of Water Resources everyone is collaterally estopped from objecting to it in the SRBA. There is simply no case law or statute that provides such a broad application of the doctrine of collateral estoppel.
4. Collateral estoppel is an equitable remedy and he who seeks equity must do equity. The fact that the Valley Club, or its predecessors in interest, deceived Dick Oneida by indicating, through their engineer, that certain things would be done and that the water would only be used for irrigation, does not reek of equity.

Therefore, we request that moveants Motion to Dismiss Objections be dismissed and that Big Wood Canal Company be awarded costs and attorney fees for having to defend such frivolous motions.

DATED THIS 21 day of July, 2008.

HOBDEY LAW OFFICE, PLLC


Craig D. Hobdey

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of July, 2008, I caused to be served copies of the foregoing RESPONSE TO MOTION TO DISMISS OBJECTIONS AND REQUEST FOR ATTORNEY FEES by U.S. Mail, postage prepaid to the following:

RESPONSE TO MOTION TO DISMISS OBJECTIONS
AND REQUEST FOR ATTORNEY FEES

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RESPONSE TO MOTION TO DISMISS OBJECTIONS
AND REQUEST FOR ATTORNEY FEES

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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 No. 37-21731
)
)
)
)
)

NOTICE TO VACATE HEARING

NOTICE IS HEREBY GIVEN that the hearing on the Motion to Amend Objection on August 4, 2008 at 10:00 a.m. before Special Master Brigitte Bilyeu, at the SRBA District Court, Twin Falls, Idaho, is hereby VACATED. The objections have been withdrawn, and no motion to amend has been filed.

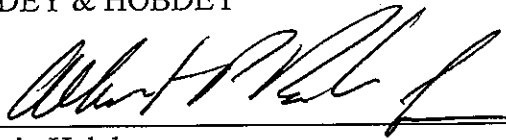
COPY

DATED this 22 day of July, 2008.

BARKER ROSHOLT & SIMPSON LLP

By 
Albert P. Barker
Attorney for Objectors Tom O'Gara, John F.
Stevenson, Bill Molyneux, Pete Van Der
Meulen, Grace Eakin, Rocky Sherbine, Gerald
Bashaw, Pepin Corso-Harris

HOBDEY & HOBDEY

By 
Craig Hobdey
Attorney for Big Wood Canal Company

CERTIFICATE OF MAILING

I hereby certify that on the 22 day of July, 2008, I mailed the original and copies of this notice to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the owner of the water right at the following address:

Name: Charles T. Foley
Address: 1 East End Ave. Apt. 12B
New York, NY 10021

3. Copies to:

IDWR DOCUMENT DEPOSITORY
PO Box 83720
Boise, ID 83720-0098

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