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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

) STATEMENT OF RESPONDENT
)

Case No. 39576

) SUBCASE NOS: 47-04048A 47-04060
) 47-07450 47-17312
)

We, John and Maureen Boling, protest the objection filed by the Twin Falls Canal Company to the Idaho Department of Water Resources recommendations for each of our claimed water rights. Their proposal to downgrade those rights to "wastewater" status is insupportable for several reasons. The recognition of these objections by the Court would cause irreparable harm to us and to all users of the one hundred eighty-one water rights to which TFCC objects.

First, let us examine how the recognition of these objections would cause harm to us. Granted water rights are valuable commodities that are saleable on the open market. Wastewater rights have no such value. TFCC is offering no compensation of any kind for our agreement to completely degrade our water rights. Such compensation would have to take into account the difference between the fair market value of our property today – with granted water rights – and its fair market value without those rights. The use of agricultural water on this property has been a part of the basis of its value for seventy-eight years, and of aquacultural water for forty years. The failure of TFCC to object to that appropriation and use for such a period of time can be likened to an unrecorded grant of right-of-way. When others base fiduciary decisions on such a grant over a period of years, the grant becomes permanent and irrevocable. If TFCC feels that they have been harmed thereby, their argument should be with the statutory grantor of those rights, to wit: IDWR

With respect to the repeated assertion by TFCC that they cannot guarantee that water will always be present to satisfy the one hundred eighty-one grants that they seek to degrade, we find that to be quite understandable and we fully accept it. We are not TFCC shareholders and do not expect TFCC to supply our water. That water rights can never be guaranteed is always true because God does not guarantee TFCC or anyone else a snow pack every year. No guarantees of water delivery can ever be made. This is all inherent in the seniority system within Idaho Water Law. However, this is no justification to arbitrarily and capriciously convert our granted water rights to waste water rights without compensation.

TFCC does not seem to be acting in good faith. A letter to us dated May 13, 2009, from the law firm representing TFCC states, "TFCC has filed objections on all claims to this "waste water." But to our knowledge, no such objections have been made to the IDWR's recommendations regarding rights held by members of the Mud Creek Water Users Association, despite the same source of the water in question. Why are the irrigation

water rights of the Mud Creek Water Users Association not also being challenged? This suggests that TFCC is singling out individual water right holders as easy marks. Our only water right of any size is a 10 cfs aquaculture right from Mud Creek. Why the different treatment for the same water? Could it be that they think that individual water right holders will roll over, but a water association will hire a lawyer and successfully challenge them? Perhaps TFCC seeks to establish precedent first with the small fry. Perhaps later, they will reload for bigger game and come after the Mud Creek Water Users Association.

We suggest that the TFCC has an ulterior motive for wanting these water rights reclassified as "waste water rights." Waste water rights can be converted to other higher-value uses, such as hydropower, whereas granted water rights are fixed in their use. For example, the Birch Creek Water Association, near Oakley, converted their water rights to waste water rights so that they could immediately refile on the water as livestock water. Then they sold these livestock water right to a new mega dairy which became the focus of much community protest. But it was too late. The insider sweetheart deal was already done. Idaho water law contains provisions against speculation in water rights, but nevertheless, it happens.

By changing Melon Valley water rights to "waste water," Twin Falls Canal Company could then make water users "offers they couldn't refuse" on their then-convertible waste water rights. Salmon Falls dam is only a few miles away and it already has power generation facilities with a 400 foot fall. As electric rates continue to escalate, dewatering the Melon Valley could become an increasing lucrative prospect for TFCC. Most of the trees that now live off the sub would die. The creeks and the wildlife would disappear. Of course, if TFCC had to do an EIS on this proposal, the public outcry would be deafening. But, by accomplishing it all quietly through the magic of water right negation and acquisition, public outcry and reprisal could be conveniently avoided. The environmental consequences of drying up a beautiful valley in order to generate power and sell it to California with 50% transmission losses would never have to be weighed against the status quo. Public interest doctrine would never have to be considered.

TFCC has let it be known that they seek control of all water above and below ground within TFCC's "perimeter." Their premise that all ground water in their "perimeter" and all the water in the partly spring-fed creeks inside the TFCC "perimeter" belongs to them rests on the claim that it all ultimately somehow originates from a TF shareholder's irrigation or from leakage from some TFCC system or structure.

There are several problems with this argument. First, attempts to prove the source(s) of groundwater have famously frustrated engineers and hydrologists for decades. It's a very complicated subject. Rain and snowmelt also infiltrate and become ground water and many believe that some of the seep water comes from distant sources such as the South Hills. The burden of proof rests on TFCC, but all of this water is mixed up in the aquifers and there is no way to sort it out. There are several aquifers ranging over hundreds of feet in depth and there is mixing between them. For example, our domestic well is "contaminated" with much deeper geothermal water to the extent that you can

comfortably bathe in it on a hot day. Groundwater origin is an endless complicated rabbit hole of a subject.

Ted Diehl, long-time Northside Canal Co. manager, once said he believed that 70 to 85% of the groundwater in the Jerome area derived ultimately from the Northside canal system but that NSCC could not claim any control, much less ownership, of the groundwater because they could not quantify its origins and even if they could, they would not dare open up this issue for fear the federal government would jump in and assert their own claims! We wonder what is emboldening the TFCC.

In sum, we dispute the idea that Twin Falls Canal Company owns the groundwater in their perimeter. If they don't own the groundwater, then logically they also don't own water that emerges from aquifers and becomes surface water. The sources of water in Mud Creek, Wilson Creek and thousands of local springs are complex – with some coming from use and reuse of TFCC water and some coming from pre-existing aquifers or natural recharge. In any case, much of the water in Mud Creek much of the time was ground water a short time ago. The banks of Mud and Wilson creeks and the entire area are a maze of springs. The sources of this water and the obscure paths that it takes are largely unknown and unknowable.

TFCC asserts they own the water rights to most Buhl seep tunnels because they have a 1910 filing date on them but did they prove up on this water and put it to beneficial use by 1915? Many old timers assert that some of those seeps existed before the canal system was installed. We don't have any way to know how much of that water was here before the canal system was installed.

Mud and Wilson Creeks are natural waterways incised into deep canyons. These landforms did not form in the last 100 years, but through eons of stream down-cutting. Their flows vary with the season and precipitation in addition to irrigation season draw downs. Both have stream flora and fauna typical for the region and support large wildlife populations in their riparian areas. If TFCC intends to dewater or significantly drop the water levels in these creeks, that will create public interest doctrine impacts that should be addressed through an EIS rather than by quietly backing into these changes through theft of long-held water rights.

We beg the Court's forbearance in denying the objections of the Twin Falls Canal Company to our several granted water rights.