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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	)	Subcase Nos. 01-00004, et al. (See attached Exhibit A)
	)	
	)	
Case No. 39576	)	POCATELLO'S RESPONSE TO AND JOINDER IN
_____	)	MLWU'S MOTION FOR SUMMARY JUDGMENT

Pocatello hereby responds to Mud Lake Water User's Motion for Summary Judgment ("MLWU's Motion"). Based on arguments in MLWU's Motion, the information presented through Mr. Rob Harris's Affidavit and attachments, the legal argument below, as well as the arguments made in Pocatello's Response to SWC's Second Motion for Summary Judgment and incorporated here by this reference, Pocatello requests that the MLWU Motion be granted.

ARGUMENT

As described in the MLWU Motion, it was the intent of the claimants and parties upon entering into the stipulation underlying the Eagle Decree that "flood waters" (i.e., those arising

from snow melt that would otherwise have been stored by Palisades Reservoir) be reserved for downstream users. *See* Exs. 9, 10, 13, 14, 15, 24, 28, to Affidavit of Robert L. Harris in Support of Motion for Summary Judgment. It is undisputed that these water rights have been administered as “high” or “flood” water rights. As such, a clarifying remark is consistent with past administration and is necessary for the future administration of the subject water rights claims.

In addition, the Eagle Decree and stipulation provide that Claimants operations under the Eagle Decree would not injure other parties’ rights.

The award of these so-called flood water rights to parties Plaintiff to this action claiming them a uniform priority date of April 1, 1939, will not injure or impair the rights of any other parties and is intended to be a valid and binding settlement of all the claims of the right, title, and interest of the various parties Plaintiff herein and to the said waters.

Eagle Decree Findings of Fact and Conclusions of Law, July 10, 1968, attached as Exhibit D to Affidavit of C. McHugh in Support of Motion for Summary Judgment on Priority Dates, FOF XII (emphasis added). As the MLWU Motion points out, a deal is a deal. Claimants water rights based on the Eagle Decree must be limited to “flood flows”. To proceed otherwise would be to negate the only consideration given to Pocatello and other stipulating parties who are not recipients of the “flood flows” divided up by the Eagle Decree and do not otherwise benefit from the stipulation.

The 1994 Legislative Council Committee Report on the Snake River Basin Adjudication (“Committee Report”) outlines the legislative goals of the SRBA. Importantly, the Committee felt that conditions must be included in decrees to make them administrable.

While the quantification of water rights is important, it is of little use if the decree fails to provide an adequate basis for future administration. The State must know how each water right relates to another with sufficient legal and hydrologic certainty to ensure delivery in accordance with priority and in order to know what

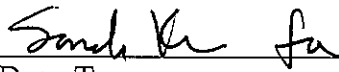
water supplies remain for future use. Thus, the final decree in the SRBA must contain those provisions necessary to allow the IDWR to administer the federal and state water rights as decreed.

Committee Report at 33 (emphasis added). Consistent with the legislature's goals in authorizing the SRBA--and consistent with the nature of the rights in the underlying Eagle Decree-- a clarifying remark is necessary to limit these water rights to "flood water" sources, as determined by the Eagle Decree.

Dated this 29th day of July, 2009.

CITY OF POCATELLO ATTORNEY'S OFFICE

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ATTACHMENT A – “HIGH WATER” aka “SOURCE OBJECTION” subcases

Subcase Nos.:

01-00004
01-00005
01-00006
01-00007
01-00008
01-00009
01-00010
01-00014
01-00016
01-00017
01-00212
01-00213
01-02050
01-02061
01-10034
01-10225
01-10237
01-10238
01-10240
01-10241
01-10482

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on this 29TH day of July, 2009, a true and correct copy of **Pocatello's Response to and Joinder in MLWU's Motion for Summary Judgment for SRBA Surface Water Coalition Water Rights Cases [High Water aka Source Objection Subcases]** was served by email to those with email addresses and U.S. Mail, postage pre-paid and addressed to the following:



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