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FEB 23 2012  
DEPARTMENT OF  
WATER RESOURCES

*Attorneys for Mud Lake Water Users, Inc.*

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.: 31-12181

**RESPONSE TO MOTION TO FILE  
LATE OBJECTION**

Mud Lake Water Users, Inc. ("MLWU"), by and through counsel of record, hereby submits this *Response to Motion to File Late Objection*. This brief is made in response to the State of Idaho's *Motion to File Late Objection* filed on December 14, 2011.

MLWU has no objection to the State's motion, and requests that it be granted. As explained in the State's filing, the point of diversion for the Lone Tree Diversion is on private land, which then traverses onto private, federal, and State of Idaho land. The Lone Tree project was undertaken in the late 1960s as part of an effort to divert flood water from Camas Creek out onto nearby desert lands in order to protect the Mud Lake levee from overtopping with flood water. The project was primarily overseen by the United States Army Corps of Engineers (the "Corps").

Based upon conversations with BLM representatives in Idaho Falls, it appears that the Corps' intent was for the project to be constructed under their direction, but then for the local water

users to follow up and obtain necessary easements where the canal was constructed and where the water eventually flowed. This apparently was never accomplished, but through this filing in the SRBA for the above subcase, the easement issues have now been raised and addressed with regards to the federal land involved in the project. MLWU has already submitted their request for a right-of-way across federal land, and based upon a response from local BLM officials, anticipates that authorization to be issued very shortly.

With regards to State land, however, they initially did not file an objection to the claim for this water right, and were not aware of the facilities that are currently existing on State ground. As was noted in the State's *Motion to File Late Objection*, counsel for MLWU was the person who initially contacted David Stanish of the Attorney General's office to make him aware of this issue to determine what interest the State of Idaho would have in becoming involved in this subcase. Based on the State's *Motion to File Late Objection*, it makes very good sense for the State to be involved because almost the entirety of the constructed Lone Tree Canal traverses State of Idaho land, as well as a portion of the overflow area.

New counsel for the State of Idaho on this matter, Tyson Nelson, has already been in contact with MLWU counsel regarding the State's desire for MLWU to first obtain a land use permit for the Lone Tree facilities, and then working to obtain a formal easement for the lands over which the Lone Tree Canal and overflow area traverse. A copy of an updated map showing where these lands are located is attached to the amended claim submitted by MLWU. MLWU will submit a request for a land use permit from the State of Idaho, as requested by Mr. Nelson, on February 21, 2012. Mr. Nelson anticipates that a permit could be issued by the State within a week or so of MLWU's request. Therefore, the involvement of the State of Idaho will not delay these proceedings in any way, and in fact, the parties have already agreed to a resolution path moving forward.

Given the current status of this subcase, MLWU suggests proposed language in the partial decree for Subcase No. 31-12181 to be similar to that contained in another subcase involving easement issues with the State of Idaho (Subcase No. 21-13102) to address the easement issues on both State and federal land. Such proposed language would likely be similar to the following:

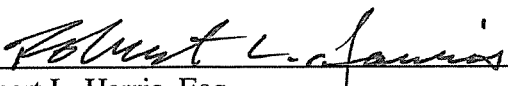
The exercise of this right is subject to the water right holder obtaining and maintaining a federal land use easement and a state land use easement and/or access permit for access and maintenance of the diversion and conveyance works located on State and federal lands.

As of the date of the partial decree of this water right, federal authorization for maintenance of the diversion and conveyance works located on federal land is evidenced by \_\_\_\_\_.

As of the date of the partial decree of this water right, State authorization for maintenance of the diversion and conveyance works located on State land is evidenced by permit No. \_\_\_\_\_ which expires on \_\_\_\_\_.

For the above reasons, MLWU has no objection to the State of Idaho's participation in this matter, and in fact, does not believe a full and appropriate resolution of this subcase could occur without the involvement of the State of Idaho. Therefore, MLWU requests that the State's *Motion to File Late Objection* be granted in order for it to participate in all respects.

DATED this 20<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
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## CERTIFICATE OF MAILING

I hereby certify that on February 20 (email) and February 21 (regular mail), 2012, I mailed the original and copies of this *Response to Motion to File Late Objection*, including all attachments, to the following persons by email and regular mail:

1. Original to:

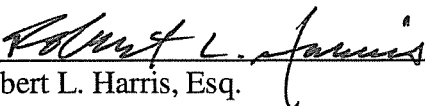
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