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DEPARTMENT OF
WATER RESOURCES

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Attorneys for: Fremont-Madison Irrigation District, Idaho Irrigation District and Blackfoot Irrigation 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. 01-2064, et al and 01-2068, et al
Case No. 39576	)	(See attached list)
	)	
	)	RESPONSE TO STATE OF IDAHO'S MOTION
	)	FOR PARTIAL SUMMARY JUDGMENT
	)	
_____	)	

Comes now Fremont-Madison Irrigation District, Idaho Irrigation District and Blackfoot Irrigation Company, by and through their counsel, Jerry R. Rigby, of Rigby, Andrus & Rigby, Chartered, pursuant to Rule 56 of the Idaho Rules of Civil Procedure, and hereby respond to the State of Idaho's Motion for Partial Summary Judgment, as follows:

These responding parties, being spaceholders in reservoirs impacted by the above entitled subcases, fully concur with the following positions set for by the State of Idaho:

1. The Idaho Supreme Court's decision in *United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 157 P.3d 600 (2007), is controlling authority for purposes of determining the ownership interest the City of Pocatello may have in storage water right no. 01-2068 (Palisades

Reservoir).

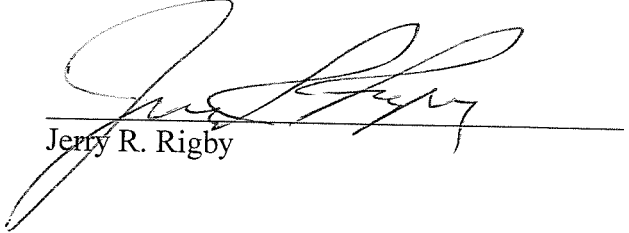
2. The partial decrees for storage water rights nos. 01-2064 (American Falls Reservoir) and 01-2068 (Palisades Reservoir) should not include any reference to *Burley Irrigation Dist. v. Eagle* (Idaho 5th Jud. Dist., July 10, 1968) and/or *Aberdeen-Springfield Canal Co. v. Eagle* (Idaho 7th Jud. Dist., Mar. 12, 1969), and/or to the stipulations and/or supplemental decrees entered therein.

3. The following “refill” remark should be included in the partial decrees for storage water rights nos. 01-2064 (American Falls Reservoir) and 01-2068 (Palisades Reservoir) because it is necessary to define and/or efficiently administer the rights:

This right is filled for a given irrigation season when the total quantity of water that has accumulated to storage under this right equals the decreed quantity. Additional water may be stored under this right but such additional storage is incidental and subordinate to all existing and future water rights.

The basis for these responding spaceholders’ position is fully set forth in the State of Idaho’s Motion.

Dated this 16th day of April, 2012.


Jerry R. Rigby

Subcase Nos.

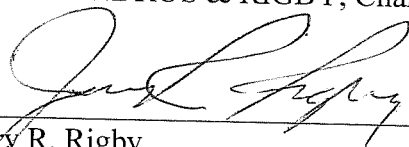
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CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 16th day of April, 2012.

RIGBY ANDRUS & RIGBY, Chartered


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