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DEPT. OF WATER RESOURCES
SOUTHERN REGION

Attorneys for the Objectors

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	Transfer No. 83485
FOR TRANSFER NO. 83485 IN THE	)	
NAME OF ECCLES FLYING HAT	)	BRIEF IN SUPPORT OF MOTION IN
RANCH, LLC	)	LIMINE
	)	
	)	
	)	
	)	
	)	

COMES NOW the Objector, Hiawatha Canal, by and through their attorney of record, Fritz X. Haemmerle of Haemmerle Law, P.L.L.C., and hereby submits this Brief in support of its Motion in Limine.

I. FACTS AND PROCEDURAL BACKGROUND

1. On June 15, 2001, the Petitioner, Eccles Flying Hat Ranch, LLC ("Eccles"), filed for a transfer of several water rights out of the Hiawatha Canal in Transfer No. 68526 ("Transfer").

2. On May 6, 2002, the Transfer was approved by the Idaho Department of Water Resources ("IDWR"). The Department provided written approval in a Preliminary Order

Correcting Transfer Approval, which was entered on June 3, 2002 (“Order”). A true and correct copy of the Order is attached to *Haem.Dec.*, Exh. 1. In pertinent part, the Order reads:

1.40 cfs, shall continue to be diverted into the Hiawatha Canal to mitigate the removal of Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977 and 37-11978 . . . until such time as the canal ceases operation. The Department retains jurisdiction in this matter for a period of five (5) years to modify the diverted amount should justification for a lessor [sic] amount be provided by the right holder within that period.

Order, Paragraph 2.

3. The Order was not appealed, and Eccles never moved to reconsider the condition in the period of five (5) years after the Order was issued.

4. Thereafter, Eccles’ water rights were decreed in the Snake River Basin Water Adjudication (“SRBA”). On November 15, 2007, as part of 37-577BP, Eccles executed a Standard Form 1 Objection (“Objection”) to the water right. A true and correct copy of the Objection is attached to *Haem.Dec.*, Exh. 2. In that Objection, Eccles conceded and admitted: “That 1.4 cfs should remain in the Claimant’s name and be restored to this right in the event it is no longer required as conveyance loss of the Hiawatha, should the Hiawatha Canal in the future be lined or abandoned.” *Id.*, Paragraph E.

5. Pursuant to Eccles claim for its water rights in the SRBA and given its Objection, the SRBA Court issued *Partial Decrees* for Eccles’ water rights. See e.g., *Partial Decree* for 37-577BP, attached as Exhibit 3. The *Partial Decree* reads: “1.40 cfs shall continue to be diverted into the Hiawatha Canal to mitigate the removal of rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977 and 37-11978 . . . until such time as the canal ceases operation or is otherwise no longer necessary for such mitigation.”

6. No appeal of the *Partial Decrees* was taken by Eccles.

II. ARGUMENT

As a matter of fact and law, Eccles is foreclosed from arguing that the 1.4 cfs is not necessary for mitigation of rights in the Hiawatha Canal. "By statute, 'decree[s] entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system.' I.C. § 42-1420(1)." *Rangen, Inc. v. Idaho Dep't of Water Resources (In re Distribution of Water to Water Right Nos. 36-02551 and 36-07694)*, 159 Idaho, 798, 367 P.3d 193 (Idaho 2016).

In this case, on August 30, 2011, the SRBA Court issued *Partial Decrees* stating that "1.40 cfs shall continue to be diverted into the Hiawatha Canal to mitigate the removal of rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977 and 37-11978 ... until such time as the canal ceases operation or is otherwise no longer necessary for such mitigation." Thereafter, the SRBA Court issued is *Final Unified Decree*, which stated that: "This Final Unified Decree is conclusive as to the nature and extent of all water rights within the Snake River Basin within the State of Idaho with a priority date prior to November 19, 1987." *See, Haem.Dec. Exh. 4.*

Based on the binding effect of the Decrees, the Hearing Officer must issue an Order preventing Eccles from attempting to alter or amend any part of the *Partial Decrees*, including but not limited to, presenting any evidence that: (1) the amount of water necessary for mitigation, 1.4 cfs, is wrong or should be something different; and (2) the 1.4 cfs is not necessary for mitigation.

DATED this 1st day of December 2021.


Fritz X. Haemmerle

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December 2021, I have caused to be presented the foregoing to:

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