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RECEIVED
MAR 29 2006
Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 72385

Case No. CV-2005-1275

RESPONSE TO NOTICE OF JOINT
PROTEST

COMES NOW, the City of Blackfoot (the "City"), by and through its attorney, Daniel R. Acevedo, and responds to the Notice of Joint Protest filed by A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, Twin Falls Canal Company, and Northside Canal Company, collectively, the "Surface Water Coalition,"

1. The City denies that the Application fails to provide sufficient evidence regarding the proposed change in the place of use and nature of use for the subject water right.
2. The City denies that the Application violates the criteria of I.C. § 42-222.
3. Idaho Code §42-222 requires the Idaho Department of Water Resources to consider four items in approving the change in point of diversion, place of use or nature of use of a water right. The City leased a water right from the New Sweden Irrigation District and has negotiated to purchase the right rather than continue leasing it. In response to the protestants and the IDWR the City and New Sweden Irrigation District have determined that:
 - a. Other water rights will not be injured by the proposed transfer. The change in point of diversion and place of use will not change the demand for water in the Idaho

Falls to Blackfoot reaches of the river. If this right were reinserted in the water right list of the New Sweden Irrigation District the same amount of natural flow will be diverted from the river as will be diverted after the transfer

b. The proposed change does not constitute an enlargement in the use of the original rights. The concept of "use" relates to the depletion from the basin or river system in which the water right was decreed. The change proposed in this transfer application is non-consumptive. There may be some "relative consumption" due to the associated movement of the water diverted into Jensen's Grove pond, and the percolation of some of that water into the Eastern Snake River Plain Aquifer. The ESPA aquifer model indicates that any losses return as river gain in the river reaches between the near Blackfoot river gage and the Minidoka gage. Because the change will result in water being moved from a higher reach to a lower reach, the change may not be completely non-consumptive as observed from the perspective of the reaches located above Blackfoot. Nevertheless, even in those reaches the use will not be greater than was previously authorized under the right.

c. The proposed change will not conflict with the local public interest. It is clearly in the best interest of the public to approve the application. The local public is well reflected by the interests of the businesses and merchants located in and around Blackfoot who have donated funds to keep Jensen's Grove pond filled in the past. They recognize the direct relationship between business activities and water in Jensen's Grove pond.

d. The proposed change will not be contrary to the conservation of water resources within the State of Idaho. The proposed transfer is a fundamental water conservation activity. Any water that can be stored in the ESPA and thus prevented from wasting past Milner Dam represents a conservation of Idaho's water resources.

DATED this March 28, 2006.


Daniel R. Acevedo
Attorney for the City of Blackfoot

CERTIFICATE OF SERVICE

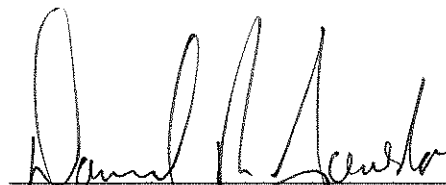
I hereby certify that on this 28th day of March, 2006, I served a true and correct copy of the above and foregoing document on the following person(s) by U.S., Mail, postage pre-paid:

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