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July 18, 2008

RECEIVED

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DEPARTMENT OF
WATER RESOURCES

Phillip J. Rassier
Deputy Attorney General
Idaho Department of Water Resources
Box 83720
Boise, ID 83720-0098

RE: Proposed Final Order Creating Water District No. 140
Our File No.: 19198.070010

Dear Phil:

Thank you for your patience in this matter. As you know the creation of Water District No. 140 started many years ago with conferences between the Department and representatives of Southwest Irrigation District. Subsequent to those meetings the hearings were held, then the Order process started and then came the intervention of A & B Irrigation District.

Throughout all of that period of time, meetings and hearings, until A & B arrived, there were no discussions about the Eastern Snake Plain as it relates to Water District No. 140. We now have in your proposed Final Order many references to the ESPA in paragraphs 25, 26, 27, 28 and 39. These were never discussed in any of the meetings or any of the hearings and now all of a sudden they start appearing in the Final Order.

In addition to the foregoing, the definition in the Conjunctive Management Rules as you quoted in paragraph 25 excludes areas lying south of the Snake River and West of the line separating Sections 34 and 35 of Township 10 South Range 20 East Boise Meridian. By including all the reference to the ESPA in this Order you are in contradiction of already established Rules. Obviously, the water users are subject to prior rights, but they don't have to be involved in the ESPA.

If we are going to have this in the Order then I think there needs to be a hearing wherein evidence can be produced that dispells your reference to the model and that will support the definition of the ESPA which would exclude property south of the river.

In addition there is really no specific ruling that this Order does not become res judicata in further proceedings. We not only want that included, but we want any reference to the ESPA taken out of this Order as it is certainly in contravention of your own Rules and there was never any evidence allowed to be introduced that would contradict the model.

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The bottom line is, Phil, we object to paragraphs 25, 26, 27, 28 and 39 and the fact there is no inclusion on the res judicata.

We also would request that if you are going to stay with this position, that we have further hearing on it before you enter the Order or we will undoubtedly be back in the District Court.

You've asked for comment on the Proposed Order and we are making those comments although as I understand it this is not in a formal or in an administrative context, it's merely commenting on the Order.

Very truly yours,

PARSONS, SMITH & STONE, LLP

A handwritten signature in black ink, appearing to read "William A. Parsons", written in a cursive style.

William A. Parsons

WAP/sw

cc: Travis L. Thompson
Grant Wyatt
Randy Brown
Craig Searle
Goose Creek Irrigation District
Brian Higgs