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APR 25 2005
Department of Water Resources

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION FOR ADMINISTRATION BY A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT # 2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, AND TWIN FALL CANAL COMPANY	)	**STATE AGENCY GROUND WATER USERS' ANSWER TO PETITION FOR WATER RIGHT ADMINISTRATION ETC.**

The Idaho Department of Juvenile Corrections, the Idaho Department of Health & Welfare, the Idaho Department of Fish & Game, and the Idaho Transportation Department, who will be called the State Agency Ground Water Users, by and through their counsel of record, Michael S. Gilmore, Deputy Attorney General, file this Answer to Petition for Water Right Administration Etc.[1]

This Answer contains general denials concerning Petitioners' allegations, affirmative allegations concerning the State Agency Ground Water Users water rights, and

[1] The Surface Water Coalition's Petition was served on ground water users by mail on Thursday, March 31, 2005. Answers to a Petition are due 21 days after the service date (IDWR Procedural Rule 270), but an additional 3 days are allowed when the service is by mail (IDWR Procedural Rule 57). Thursday, April 21, 2005, is 21 days after March 31, 2005. Three days after that is Sunday April 24, 2005, so the deadline for answering becomes the next business day, Monday, April 25, 2005. See Idaho Code §§ 73-108 and 73-109.

defenses as follows.

1. The State Agency Ground Water Users are without sufficient knowledge or information to admit or deny paragraphs 1 through 23 of the Petition and therefore deny them.

2. The State Agency Ground Water Users neither admit nor deny paragraph 24 of the Petition because it is not an allegation of fact.

3. The State Agency Ground Water Users affirmatively allege that their water rights listed in the certificate of service of the Petition for Administration Etc. have the following characteristics described in paragraphs 4-10:

4. The Idaho Department of Juvenile Corrections, St. Anthony Juvenile Corrections Center, has a beneficial use ground water right for irrigation (No. 21-11972) to 0.9 cfs with a priority date of January 1, 1909, in T 7N R40E Sec 2, for:

40 acres in the NWNW ¼¼ section.

as shown by the IDWR Adjudication Claim Report for Water Right No. 27-11972.

5. The Idaho Department of Health & Welfare, State Hospital South, has a beneficial use ground water right for irrigation (No. 27-11987) to 0.44 cfs with a priority date of April 1, 1899, in T 3S, R 35E, Sec 2, for:

3 acres in the NWSW ¼¼ section,
1.8 acres in the SESW ¼¼ section,
1.2 acres in the SWSE ¼¼ section,
16 acres in the SWSW ¼¼ section, and

as shown by the IDWR Adjudication Claim Report for Water Right No. 27-11987.

6. The Idaho Department of Health & Welfare, State Hospital South, has a licensed ground water right for irrigation (No. 27-7084) to 3.11 cfs with a priority date of May 9, 1977, in T 3S, R 35E, Sec 2, for:

39 acres in the NESE ¼¼ section,
14 acres in the NESW ¼¼ section,
36 acres in the NWSE ¼¼ section,
38 acres in the NWSW ¼¼ section,
39 acres in the SESE ¼¼ section,

34 acres in the SESW ¼¼ section,
39 acres in the SWSE ¼¼ section, and
38 acres in the SWSW ¼¼ section,

as shown by the IDWR Water Right License No. 27-7084 and the IDWR Adjudication Claim Report for Water Right No. 27-7084.

7. The Idaho Department of Health & Welfare, State Hospital South, has a licensed ground water right for irrigation (No. 27-7478) to 2.2 cfs with a priority date of May 31, 1989, in T 3S, R 35E, Sec 1, for:

38 acres in the NESW ¼¼ section,
39 acres in the NWSW ¼¼ section,
39 acres in the SESW ¼¼ section, and
39 acres in the SWSW ¼¼ section,

and in T 3 S, R 35 E, Sec 2, for:

16 acres in the NESW ¼¼ section,
39 acres in the NESE ¼¼ section,
37 acres in the NWSE ¼¼ section,
39 acres in the SESE ¼¼ section,
34 acres in the SESW ¼¼ section, and
39 acres in the SWSE ¼¼ section,

and in T 3 S, R 35 E, Sec 12, for:

12 acres in the NENW ¼¼ section,

as shown by the IDWR Water Right License No. 27-07478 and the IDWR Adjudication Claim Report for Water Right No. 27-7478.

8. The Idaho Department of Fish & Game, has an SRBA decreed ground water right for irrigation and for wildlife (No. 31-2316) to 7.5 cfs with a priority date of February 18, 1953:

(i) <u>Irrigation</u>:

in T 7N, R 34E, Sec 25, for:

3.3 acres in the SENE ¼¼ section,
28 acres in lot 1 of the NESE ¼¼ section, and
6.6 acres in lot 5 the SESE ¼¼ section,

and in T 7N, R 35E, Sec 29, for:

13 acres in the NESE ¼¼ section,
4.1 acres in the NWSE ¼¼ section,
16 acres in the NWSW ¼¼ section,
5.2 acres in the SENE ¼¼ section,
9.9 acres in the SESE ¼¼ section,
32 acres in the SESW ¼¼ section,
35 acres in the SWSE ¼¼ section, and
40 acres in the SWSW ¼¼ section,

and in T 7N, R 35E, Sec 30, for:

40 acres in the NESE ¼¼ section,
29 acres in the NESW ¼¼ section,
39 acres in the NWSE ¼¼ section,
21 acres in lot 3 of the NWSW ¼¼ section,
18 acres the SENE ¼¼ section,
40 acres in the SESE ¼¼ section,
23 acres in the SESW ¼¼ section,
0.2 acres in lot 2 of the SWNW ¼¼ section,
7.9 acres in the SWNE ¼¼ section,
40 acres in the SWSE ¼¼ section, and
9.8 acres in lot 4 of the SWSW ¼¼ section,

and in T 7N, R 35E, Sec 31, for:

2.7 acres in lot 1 of the NENE ¼¼ section, and
2 acres in lot 2 of the NWNE ¼¼ section,

and in T 7N, R 35E, Sec 32, for:

4.5 acres in lot 3 of the NENW ¼¼ section,
0.6 acres in lot 2 of the NWNE ¼¼ section, and
14 acres in lot 4 of the NWNW ¼¼ section, and

(ii) Wildlife:

in T 7N, R 34E, Sec 25, for:

lot 1 of the NESE ¼¼ section,
lot 2 of the NWSE ¼¼ section,
the SENE ¼¼ section,
lot 5 of the SESE ¼¼ section, and
the SWNE ¼¼ section,

and in T 7N, R 34E, Sec 20, for:

the SESE ¼¼ section,

and in T 7N, R 34E, Sec 28, for:

the NESW ¼¼ section,
the NWNW ¼¼ section,
the NWSW ¼¼ section,
the SWNW ¼¼ section,
the SWSW ¼¼ section,

and in T 7N, R 35E, Sec 29, for:

the NENE ¼¼ section,
the NESE ¼¼ section,
the NWSE ¼¼ section,
the NWSW ¼¼ section,
the SENE ¼¼ section,
the SESE ¼¼ section,
the SESW ¼¼ section,
the SWNW ¼¼ section,
the SWSE ¼¼ section, and
the SWSW ¼¼ section,

and in T 7N, R 35E, Sec 30, for:

the NESE ¼¼ section,
the NESW ¼¼ section,
the NWSE ¼¼ section,
lot 3 of the NWSW ¼¼ section,
the SESE ¼¼ section,
the SESW ¼¼ section,
lot 2 of the SWNW ¼¼ section,
the SWNE ¼¼ section,
the SWSE ¼¼ section, and
lot 4 of the SWSW ¼¼ section,

and in T 7N, R 35E, Sec 31, for:

lot 1 of the NENE ¼¼ section, and
lot 2 of the NWNE ¼¼ section,

and in T 7N, R 35E, Sec 32, for:

lot 3 of the NENW ¼¼ section,
lot 2 of the NWNE ¼¼ section, and
lot 4 of the NWNW ¼¼ section,

and in T 7N, R 35E, Sec 33, for:

the NWNW ¼¼ section,

as partially decreed by the SRBA court for Water Right No. 31-02316 on February 22, 2002.

9. The Idaho Department of Fish & Game, has a licensed ground water right for irrigation and for wildlife (No. 31-2448B) to 0.2 cfs for irrigation and 6 cfs for wildlife (with a total diversion of 6.0 cfs) with a priority date of January 3, 1949:

(i) Irrigation:

in T 7N, R 35E, Sec 25, for:

10 acres in the NESE ¼¼ section, and

(ii) Wildlife:

in T 7N, R 34E, Sec 21, for:

the NWSE ¼¼ section,
the NWSW ¼¼ section,
the SESW ¼¼ section, and
the SWSW ¼¼ section,

and in T 7N, R 34E, Sec 28, for:

the NENW ¼¼ section,
the NWNW ¼¼ section,
the SENW ¼¼ section, and
the SWNW ¼¼ section,

as shown by the IDWR Adjudication Claim Report for Water Right No. 31-2448B.

10. The Idaho Transportation Department, Division of Highways, has an SRBA decreed ground water right for industrial use (No. 31-7372) to 0.05 cfs with a priority of January 1, 1982, in T 6N, R 34E, Sec 18 for:

Industrial use for the Mud Lake Maintenance Shed

as partially decreed by the SRBA Court for Water Right No. 31-07372 on February 22, 2002.

11. The ground water rights described in ¶¶ 4-6 and 8-9 are prior to February 27, 1979, and are not subject to the mitigation and/or curtailment requirements of the Director's Order of April 19, 2005.

12. The ground water rights described in ¶¶ 4-10 are not in Water District Nos. 120 or 130 and are not subject to the mitigation and/or curtailment requirements of the Director's Order of April 19, 2005.

13. Petitioners' water rights have not yet been adjudicated in the SRBA.

14. Petitioners' historical water rights and actual beneficial use, both historical past and the immediate past, have not yet been adjudicated in the SRBA, and may be smaller than claimed in their Petition.

15. Whether Petitioners have wasted water, used water unreasonably or inefficiently, or unreasonably diverted water has not yet been adjudicated in the SRBA and may be a defense against curtailment or mitigation.

16. Whether any State Agency Ground Water user has materially injured any Petitioner has not yet been adjudicated in the SRBA and lack of material injury may be a defense against curtailment or mitigation.

17. Whether any Petitioner has rented, exchanged or otherwise disposed of its storage waters for purposes other than supplying irrigation waters to Petitioners, and if so, whether any Petitioner has done so in amounts exceeding the State Agency Ground Water Users ground water usage has not yet been adjudicated in the SRBA and may be a defense against curtailment or mitigation.

18. Whether curtailment of a State Agency Ground Water User's ground water usage would be a futile call has not yet been adjudicated in the SRBA and may be a defense against curtailment or mitigation.

19. Whether Petitioners are bound by equitable doctrines like waiver, estoppel, laches, or customary preference has not yet been adjudicated in the SRBA and may be a defense against curtailment or mitigation, particularly for decreed water rights.

20. Licensed or decreed rights for wildlife purposes are in whole or in part non-consumptive or minimally consumptive and do not result in material harm to Petitioners, which may be a defense against curtailment or mitigation.

21. Decreed water rights for 0.05 cfs for industrial use for the Mud Lake maintenance shed are in whole or in part non-consumptive or minimally consumptive and do not result in material harm to Petitioners, which may be a defense against curtailment or mitigation. It would be arbitrary and capricious to curtail such a small industrial use water right without also curtailing junior stock watering and/or domestic water rights, which Petitioners have apparently not sought to do, which may be a defense against curtailment or mitigation.

22. The State Agency Ground Water Users reserve the right to amend this Answer to add additional allegations and defenses as additional information is provided or obtained during the course of the Department's consideration of the Petition.

DATED this 25th day of April, 2005.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By _____
MICHAEL S. GILMORE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April, 2005, I caused to be served a true and correct copy of the foregoing by regular U.S. Mail, postage prepaid, to:

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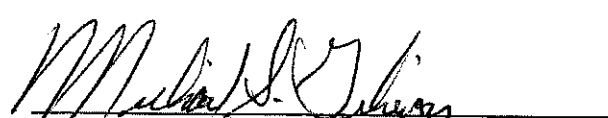

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