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January 20, 2005

VIA FACSIMILE & U.S. MAIL

Director Karl Dreher
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Statements by IDWR Personnel Concerning Water Right Delivery Call & Eastern Snake Plain Aquifer Groundwater Model

Dear Director Dreher:

We are writing on behalf of our client Twin Falls Canal Company (TFCC) with support from the other six members of the Surface Water Coalition.[1] As you are aware, the Coalition recently filed a water right delivery call for Water District No. 120 along with a separate petition requesting administration of other ground water rights and designation of the Eastern Snake Plain Aquifer (ESPA) as a ground water management area. It has since come to TFCC's attention that Department staff have made representations or published statements that call into question whether the Department or its employees have compromised their ability to fairly judge the Surface Water Coalition's request for water right administration. The known statements or representations are summarized as follows:

1) Reports in *The Idaho Statesman*

January 12, 2005

However, Karl Dreher, Idaho Department of Water Resources Director, said he needs the companies and districts to show him how much the reduction of spring flows has hurt the people they serve.

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[1] The members of the coalition are: A & B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

"About a million acres of land are irrigated on the Eastern Snake Plain Aquifer with groundwater junior in priority to the natural flow rights held by the Twin Falls Canal Co.," Dreher said. "Until we are able to see what their allegation of injury is and to evaluate it, it is premature to say what portion, if any, of that million acres may or may not be subject to curtailment."

The article implies that you or the Department has pre-determined that the Surface Water Coalition has the burden to "prove" injury to their senior surface water rights. In addition, the article insinuates that you or the Department have pre-determined that "damage" to the surface water entities' members and shareholders will serve as a "standard" for determining injury. The Coalition disagrees with these standards as implied by the *Statesman's* January 12, 2005 article. The Coalition is concerned about the perception that their request for water right administration was essentially being "prejudged" before the documents were actually filed with the Department.

2) Ron Carlson's Presentation at the Far West Agribusiness Association 32nd Annual Fertilizer and Chemical Conference on January 10, 2005

Attached to this letter is a copy of Mr. Carlson's[2] presentation at the Far West Agribusiness Association's winter conference held on January 10, 2005 in Jackpot, Nevada. Mr. Carlson's presentation included several claims that are of serious concern to the Coalition, particularly Twin Falls Canal Company.

Mr. Carlson stated, "conjunctive management principles in Idaho are logically indefensible" and argued that the new ESPA groundwater model is akin to "junk science." In addition, Mr. Carlson stated the Coalition's recent request for water right administration is only a "strategy" devised by Twin Falls Canal Company and Idaho Power Company to ensure additional water passes Milner Dam in order to increase power revenues. Next, Mr. Carlson stated "conjunctive administration is a philosophy where by groundwater users will be the hostage of TFCC" and that "Policy makers are driven by something other than the facts or any traditional view of water law." Finally, Mr. Carlson stated, "all groundwater users will have to pay for their theoretical impacts on surface supplies."

Mr. Carlson, a Department employee, delivered these statements at a public conference attended by TFCC shareholders.[3] His representations directly question the Department's duty to administer surface and ground water rights in the ESPA, question the Department's own rules and methodologies, and even the Department's commitment to conjunctive administration of any sort. He further alleges the Coalition's water administration request is some sort of "strategy" between TFCC and Idaho Power Company, and that the request for administration is a "philosophy" where groundwater users will be held "hostage" by TFCC.

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[2] Ron Carlson is the manager of the Department's Eastern Regional Office in Idaho Falls and serves as the watermaster for Water District No. 1. His presentation was as Watermaster of Water District 1.
[3] The conference was attended by approximately 250 people.

These statements and representations are prejudicial to the Coalition's current water right administration requests and question the ability of the Department to fairly respond to those requests for administration. Surely you understand the Coalition's concerns of appearing before a Department whose employees make reckless and unfounded allegations about the same parties who have asked the Department to take action to protect their water rights.

3) Post Register Interview

On January 14, 2005, Kathleen O'Neil from the *Idaho Falls Post Register* contacted me with questions about the Coalition's water right administration requests. Ms. O'Neil informed me that employees from both the eastern regional office in Idaho Falls and the State office in Boise told her the Coalition's requests were without a basis because "TFCC had all the water they needed." Ms. O'Neil refused to name the Department personnel who made those statements. Again, such statements, made by Department personnel, are prejudicial and misleading. As with the other public statements, these references question the Department's objectiveness in responding to the Coalition's requests.

4) The Department's Involvement in Prior Negotiations

Finally, the Department actively participated in the Interim Legislative Committee process throughout 2004 and had employees taking positions on issues raised. This participation and statements further raise concerns over the Department's objectiveness in responding to the requests for administration

Request for Action

The Coalition has no way of identifying each and every statement made by a Department employee regarding the validity or basis for the filings made or the water rights held by the senior surface water users. However, the public disclosures the Coalition has learned about suggest that the Department as a whole has prejudged our requests for administration. In light of the above facts, we request that you disclose the identity of each and every Department employee who has commented publicly on the ESPA conjunctive management issue, including all comments regarding the delivery call, petition and/or facts surrounding said requests filed with your office on January 14, 2005. We know for example that the Department has been approached by other news organizations to discuss the negotiations and the call or provide written statements. Further, the Department may have provided information or assistance to individuals responding to the requests for administration. In making this request, we also request that you provide a copy of all written correspondence or a summary if the comments were made verbally. This request is not limited to comments made after the January 14, 2005 filings with the Department. Statements, like some of those identified above, made prior to filings must also be identified, so that we can assess the breadth of the Department's involvement in the very public discussions.

Second, we request that you recuse and remove each individual identified from any further involvement in the Department's response to the filings. It is the Coalition's opinion that

the Department's ability to issue a decision on the Water District No. 120 water right delivery call in a fair and impartial manner may have been compromised. The Coalition is entitled to a fair and impartial review of its requests.

Since our members will be in Boise next week for the annual Idaho Water Users Association Convention, we would request a response to this letter at that time.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP

John K. Simpson

cc: Vince Alberdi, TFCC
Ted Diehl, NSCC
Roger Ling
Tom Arkoosh
Kent Fletcher