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DEPARTMENT OF
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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF LICENSING) IDAHO WATER RESOURCE BOARD'S
WATER RIGHT PERMIT NO. 01-7011) RESPONSE TO UPPER SNAKE WATER
IN THE NAME OF TWIN FALLS) USERS' AND GROUND WATER
CANAL COMPANY AND NORTH SIDE) DISTRICTS' MOTION FOR SUMMARY
CANAL COMPANY) JUDGMENT

The Idaho Water Resource Board ("IWRB"), by and through its counsel of record and pursuant to the *Order Approving Stipulation To Extend Summary Judgment Briefing Schedule Etc.*, hereby submits its response to the *Upper Snake Water Users' And Ground Water Districts' Motion For Summary Judgment*.

IWRB does not oppose the relief sought in the Upper Snake Water Users and the Ground Water Districts' summary judgment motion. IWRB submits this response only to clarify IWRB's position on certain statements in the *Memorandum In Support Of Upper Snake Water Users' And Ground Water Districts' Motion For Summary Judgment* ("MSJ Memorandum").

The MSJ Memorandum refers to "negotiations" and an "agreement" between the Department of Water Resources ("Department") and the Canal Companies with respect to the subordination condition in the permit for water right no. 01-7011. Memorandum at 3, 9, 14, 16. The

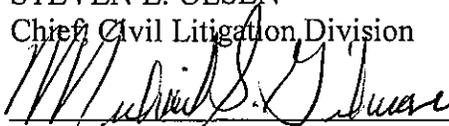
IWRB does not agree that there were “negotiations,” or that there is a legally enforceable “agreement,” between the Department and the Canal Companies with respect to the form of the subordination condition for water right no. 01-7011. *See Memorandum In Support of Idaho Water Resource Board’s Motion For Summary Judgment* (Feb. 11, 2010) at 13-14 & note 9.

Even if there were such an agreement, which there is not, it would not prevent or excuse the Director of the Department from applying Idaho Code §§ 42-203B(2) and 42-1734B(4) in licensing water right No. 01-7011. IWRB reserves the right to submit evidence and/or argument on any questions that may arise concerning the existence and/or effect of any alleged “agreement” between the Department and the Canal Companies with respect to the form of the subordination condition for water right No. 01-7011.

Respectfully submitted this 5th day of March 2010.

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CERTIFICATE OF SERVICE

HEREBY CERTIFY that on this 5th day of March, 2010, I caused to be served a true and correct copy of the foregoing by the following methods:

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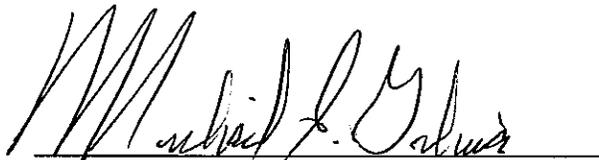
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