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DEPARTMENT OF  
WATER RESOURCES

Rec'd by email  
8/22/12

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

	)
	)
IN THE MATTER OF APPLICATION	) <b>FRANKLIN COUNTY FISH AND GAME</b>
FOR PERMIT NO. 13-7697 IN THE	) <b>ASSOCIATION'S RESPONSE TO TWIN</b>
NAME OF TWIN LAKES CANAL CO.	) <b>LAKES CANAL COMPANY'S EXCEPTIONS</b>
	) <b>TO PRELIMINARY ORDER DENYING</b>
	) <b>APPLICATION FOR PERMIT</b>
	)

FRANKLIN COUNTY FISH AND GAME ASSOCIATION, (hereinafter "FCFGA") hereby submits *Franklin County Fish and Game Association's Response to Twin Lakes Canal Company's Exceptions to Preliminary Order Denying Application for Permit*. FCFGAs response is offered in opposition to exceptions filed by the Twin Lakes Canal Company (hereinafter "TLCC").

**I. GENERAL COMMENTS**

FCFGA supports the *Preliminary Order* denying the Application for Permit filed by the TLCC. FCFGA believes the Hearing Officer made a fair and reasoned decision after conducting a five-day hearing in March of 2012 and evaluating the extensive testimony and exhibits presented during the hearing. FCFGA provides the following responses to Exceptions filed by the TLCC.

**B. Application for Permit No. 13-7697 is in the local public interest under Idaho law.**

FCFGA strongly disagrees. The Bear River provides a broad range of beneficial uses to the citizens of Idaho. These beneficial uses include Hydropower, Agriculture, Fish & Wildlife, Recreation, Water Quality and Aesthetics. FCFGA believes the Hearing Officer evaluated the many public uses of the Bear River and correctly determined that the local public interest would not be met by approving TLCC's water right application. TLCC appears to argue in its Exceptions that, without the approval of this permit, the economic health of Franklin County will suffer. FCFGA disagrees. Approval of this Permit and the construction of a dam and storage reservoir in the Oneida Narrows Canyon (ONC) will permanently destroy existing public benefits that cannot be replicated elsewhere.

In 2002, PacifiCorp, the State of Idaho and other interested parties signed a Settlement Agreement (SA) on the future operations of PacifiCorp's hydropower operations on the Bear River. A major priority of the signatories and the SA was the protection and enhancement of the imperiled Bonneville cutthroat trout. The free-flowing Bear River through the ONC has received numerous substantial improvements through the SA that incorporates a wide-range of protection, mitigation, and enhancements. The SA provides environmental protection and mitigation in conjunction with enhanced recreational opportunities for the residents of Franklin County and surrounding area. Throughout the year, the ONC supports many thousands of tubers, rafters, kayakers, canoeists, anglers, hunters, photographers, hikers and campers. Many of these uses are dependent upon a free-flowing river and are impossible to mitigate elsewhere. TLCC minimizes this loss and states that their proposed reservoir will provide replacement recreational opportunities. Once again, FCFGA disagrees. The only recreational opportunity provided by this proposed reservoir would be additional and unnecessary flat water recreation. The ONC is one of the only publically accessible and free flowing sections of the Bear River. Destroying the many existing public uses provided by the Bear River in the ONC is not in the local public interest.

TLCC states that the public would be able to easily access the new reservoir shoreline on foot. FCFGA disagrees. Currently, the public can access the entire ONC via PacifiCorp's access road that parallels the river. If the proposed reservoir is constructed, the only road access would be at the upstream end of the reservoir. So, in reality, the only substantive access to the entire ONC would be by watercraft.

Franklin County has a strong agricultural economy supported in large part by water from the Bear River and its tributaries. FCFGA maintains that the status quo is working. Granted, there are years of water shortfall along with years of excess – that's how nature works. TLCC argues that building an additional dam on the Bear River will provide their shareholders with more certainty and these interests outweigh the many other public interests that would be permanently destroyed with the construction of their project. FCFGA disagrees. The vast majority of the Bear River is already used in support of agriculture – their public interest is being met. What is at stake here is all of the other public uses that would be destroyed to provide more certainty for the shareholders of TLCC. In this instance alone, the Hearing Officer was correct in his finding that the issuance of the permit was not in the local public interest.

Finally, TLCC appears to argue that the Federal Energy Regulatory Commission (FERC) licensing process should be the deciding factor in this water right decision. FCFGA disagrees. Idaho water is not permitted by the Federal Government. While it is true that a FERC license cannot be issued without a state issued water right, these are two separate processes. While TLCC goes to great length in explaining TLCC's FERC licensing efforts including the scope and cost of the FERC ordered studies and FERC's determination of the public interest, this is not germane to this proceeding. For eight years, TLCC's efforts to secure a FERC license have been strongly contested by many parties. FERC ordered studies have been contested while other study requests were denied by FERC. PacifiCorp's concerns

about interference with their existing project have yet to be resolved. In short, there is no guarantee that even with a state issued water right that FERC will ultimately issue a license for this proposed project. FCFGA's concerns regarding the "local" public interest in this proceeding are synonymous with the public interest facts submitted in the FERC proceeding, of which, those documents were stipulated to as exhibits by TLCC and became part of the record for TLCC's water permit application which also avoided duplicative documentation. Idaho code requires the Idaho Department of Water Resources (IDWR) to consider "local" public interest as part of its permitting process. Whatever FERC may or may not consider does not abrogate or exempt IDWR from its statutory requirement. FCFGA contends there is nothing in the FERC process that specifically addresses "local" public interest. The "local" public interest within the State of Idaho should be decided by the State of Idaho, which was accurately and appropriately addressed by the hearing officer in the *Preliminary Order* to deny TLCC's water permit application.

**I. CONCLUSION**

The Director should affirm the findings and decision of the Hearing Officer to deny the Application for Permit No. 13-7697.

Dated this 22<sup>nd</sup> day of August, 2012



Jeff Seamons  
Franklin County Fish and Game Association

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WATER RESOURCES

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the following described pleading or document on the parties listed below by hand delivery, email, mail, or by facsimile, with the correct postage thereon, on this 22<sup>nd</sup> day of August, 2012.

**DOCUMENT SERVED: FRANKLIN COUNTY FISH AND GAME ASSOCIATION'S  
RESPONSE TO TWIN LAKES  
CANAL COMPANY'S EXCEPTIONS TO PRELIMINARY  
ORDER DENYING APPLICATION FOR PERMIT**

**ORIGINAL TO:** Gary Spackman  
Director, Idaho Department of Water Resources  
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**ATTORNEYS AND/OR INDIVIDUALS SERVED:**

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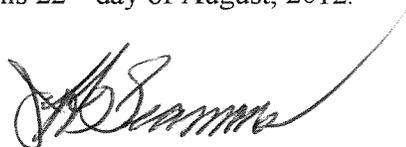
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DATED this 22<sup>nd</sup> day of August, 2012.

A handwritten signature in black ink, appearing to read "Jeff Seamons", with a long, sweeping flourish extending to the right.

Jeff Seamons  
Franklin County Fish and Game Association