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RECEIVED
 OCT 28 2014
 DEPARTMENT OF
 WATER RESOURCES

Attorneys for Boise Project Board of Control, Big Bend Irrigation District, Wilder Irrigation District, and Boise-Kuna Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

IN THE MATTER OF ACCOUNTING)	
FOR DISTRIBUTION OF WATER TO)	
THE FEDERAL ON-STREAM)	
RESERVOIRS IN WATER)	
DISTRICT 63)	
_____)	BOISE PROJECT BOARD OF CONTROL'S REQUEST FOR DISCLOSURE OF EX PARTE CONTACTS AND PRIOR STATEMENTS BY THE DIRECTOR AND STAFF CONCERNING THE ISSUE OF STORAGE ACCOUNTING

In the Scheduling Order issued by the Director on October 14, 2014, the Director described the issue for the hearing asking “how water is counted or credited toward the fill of water rights is the key question to be resolved and is the question that should be addressed in this proceeding.”

The due process clause of the United States Constitution entitles a party to an impartial and disinterested tribunal. *Marshall v. Jerico*, 446 U.S. 238 (1980). This requirement applies to administrative agencies in the State of Idaho. *Eacret v. Bonner County*, 139 Idaho 780, 784 (2004). In response to the Motion to Disqualify filed by the Ditch Companies in this matter, the Director concluded that he would not disqualify himself even though he had taken a prior position on this issue asserting that while we had expressed strong opinions he could still be open-minded.

BOISE PROJECT BOARD OF CONTROL'S REQUEST FOR DISCLOSURE OF EX PARTE CONTACTS AND PRIOR STATEMENTS BY THE DIRECTOR AND STAFF CONCERNING THE ISSUE OF STORAGE ACCOUNTING

ORIGINAL

In its Motion to Disqualify, the Ditch Companies provided a document prepared by the Director and given to an interim legislative committee this past summer. At the most recent status conference, the Director invited briefing on the issue of whether Reclamation would be bound by the outcome of the proceeding. The Director and the Department's counsel, who we presume will advise the director on reaching this decision, then both proceeded to state that Reclamation will be bound, rendering a decision on an issue to be decided in these very proceedings.

These are not the only public statements that we are aware of. At the Idaho Water Users Association convention last fall, the Director convened a very tense group of water users and both he and his counsel made statements concerning fill. In the SRBA proceedings, the Attorney General's office advised the Court that the Director would "develop a record and to defend their water rights administration and accounting methods." The Director had dozens of meetings with legislators in the past legislative session. The Director has been personally present at settlement negotiations over fill/refill rights in Basin 01, and has undoubtedly provided direction to staff on the position to be taken. For the most part, we in Basin 63 do not know what was said by or to the Director.

By this notice, the Boise Project Board of Control formally requests that the Director disclose all statements that the Director and the Attorney General's office have made in public or private concerning the issue described by the Director in this case including the individual issues outlined by the Director at the state conference. Having full knowledge of the Director's statements and those of the Department's counsel concerning the issue of fill and how a water right is satisfied, or not, is constitutionally necessary for the Boise Project Board of Control to ensure that these issues are heard by an impartial hearing officer and to provide the Boise Project

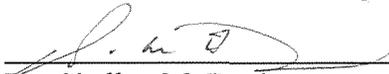
Board of Control with the opportunity to respond to any positions taken in the past by the Director or his counsel concerning the issue of fill or other issues in this case.

By this request, Boise Project Board of Control seeks all written documentation of Power Point presentations, memos, correspondence, and any other documents prepared by the Director and Department staff at his request on the question of storage right accounting in Basin 1 and 63. The request also seeks email correspondence and text messages between the Director and other members of government including his staff, legislators, the Governor's office, the Attorney General, deputies attorney general, and other state and local agencies on this topic. In addition, by this request, the Boise Project Board of Control seeks the disclosure of the contents of all oral communications made by the Director to any of these persons or entities and to the public concerning the issues in this case.

Second, under the Administrative Procedures Act, a quasi-judicial officer is required to limit the decision to the record produced at the public hearing. Idaho Code § 67-5253. Ex Parte communications must be disclosed, including the general description of the communication. It has been clear over the past year that the Director has been engaged in significant discussion with parties to this subcase, the subcase in Basin 01, with members of the legislature, and with representatives of the State, and state agencies including the Attorney General's office, concerning the issue of fill and other issues involved in this proceeding. In order to comply with the basic fundamentals of the Administrative Procedures Act and the due process clauses of the United States and Idaho Constitutions, the Boise Project Board of Control requests that the Director disclose all ex parte contacts, including the substance of those contacts, made to him by any person or entity, including any legislator, legislative group, and any other representative of the government of the State of Idaho concerning the issue of storage fill.

Dated this 28th day of October, 2014.

BARKER ROSHOLT & SIMPSON LLP


By: Shelley M. Davis
Attorneys for Boise Project Board of Control

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of October, 2014, I caused to be served a true and correct copy of the foregoing **BOISE PROJECT BOARD OF CONTROL'S REQUEST FOR DISCLOSURE OF EX PARTE CONTACTS AND PRIOR STATEMENTS BY THE DIRECTOR AND STAFF CONCERNING THE ISSUE OF STORAGE ACCOUNTING** by the method indicated below, and addressed to each of the following:

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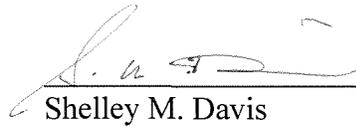
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