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**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF POWER**

ABERDEEN-SPRINGFIELD CANAL
COMPANY, an Idaho Corporation, JEFFREY
and CHANA DUFFIN, individually, as
stockholders, and as husband and wife,

Plaintiffs,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, an executive department of the
State of Idaho,

Defendant.

Case No. CV-2014-165

**SURFACE WATER COALITION'S
MOTION TO INTERVENE**

Fee Category I: \$66.00

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley
Irrigation District, Minidoka Irrigation District, Milner Irrigation District, North Side Canal
Company and Twin Falls Canal Company (hereafter collectively "Surface Water Coalition",
"Coalition", or "SWC"), by and through their attorneys of record, and hereby seeks leave to
intervene as Defendants in the above captioned case pursuant to Idaho Rule of Civil Procedure 24(a)

& 24(b). This motion is supported by the *Memorandum in Support of Motion to Intervene* and the *Affidavit of Travis L. Thompson*, filed concurrently herewith.

The Coalition moves as follows:

1. The Coalition has a significant, protectable interest in the subject matter of this litigation, because it potentially involves a matter of first impression concerning canal companies' and irrigation districts' application and utilization of recovery wells pursuant to Idaho Code § 42-228. The Coalition holds various natural flow and storage water rights to the Snake River, and the subject matter of this litigation potentially has immediate and future impacts upon not only the underlying Eastern Snake Plain Aquifer, but also the hydraulically connected reaches of the Snake River and tributary inflows relied upon by the Coalition to satisfy their water rights and delivery water to their landowners and shareholders.
2. Disposition of the action will impair or impede the Coalition's ability to protect its water rights, real property right interests in the State of Idaho, and will prejudice their right to determine the meaning of Idaho Code § 42-228 since this case is a matter of first impression.
3. The motion is timely as the complaint was just recently filed, and a stipulation was just reached between the Plaintiff and Defendant agreeing to transfer venue of the case and furthermore to reach a resolution concerning the preliminary injunction issues. The court has not substantively nor substantially litigated the issues, and the Coalition's intervention and participation in this case would not cause undue delay.
4. The Coalition's interests are not adequately protected by the Defendant, the Idaho Department of Water Resources. IDWR is a state agency that has a particular duty and mandate to the citizens of the state of Idaho, and does not represent the Coalition's individual rights and

positions. Moreover, IDWR's litigation and position will not adequately protect the Coalition's interests, which include individual water rights.

5. The Coalition also satisfies the requirements for permissive intervention under I.R.C.P. 24(b). The Coalition's defense has a question of fact or law in common with the main action, and intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

6. Attached herewith as Exhibit A is a copy of Defendant-Intervenors' Answer to Complaint for Declaratory Relief.

7. The Coalition requests oral argument on this motion.

DATED this 19th day of June, 2014.

BARKER ROSHOLT & SIMPSON LLP

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North Side Canal Company, Twin Falls Canal
Company*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of June, 2014, I served true and correct copies of the foregoing upon the following by the method indicated:

Garrick Baxter
John Homan
Meghan Carter
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Randy Budge
Carol Tippi Volyn
Racine, Olson, Nye, Budge & Bailey,
Chartered
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email



Travis L. Thompson

Exhibit

A

John K. Simpson, ISB #4242
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**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF POWER**

ABERDEEN-SPRINGFIELD CANAL
COMPANY, an Idaho Corporation, JEFFREY
and CHANA DUFFIN, individually, as
stockholders, and as husband and wife,

Plaintiffs,

vs.

DEPARTMENT OF WATER RESOURCES, an
executive department of the State of Idaho,

Defendant,

and

A&B IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2, BURLEY
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY AND TWIN FALLS
CANAL COMPANY,

Defendant-Intervenors.

Case No. CV-2014-165

**DEFENDANT-INTERVENOR
SURFACE WATERION
COALITION'S ANSWER TO
COMPLAINT FOR
DECLARATORY RELIEF**

COME NOW, the Defendant-Intervenors, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Minidoka Irrigation District, Milner Irrigation District, North Side Canal Company and Twin Falls Canal Company (hereafter collectively “Surface Water Coalition”, “Coalition”, or “SWC”), by and through their attorneys of record, and in response to Plaintiffs’ *Complaint for Declaratory Relief*, hereby denies and alleges as follows:

1. Answering Plaintiffs’ Complaint, Defendant-Intervenors, the Coalition, deny each and every allegation contained therein unless such allegation is expressly admitted and explicated herein below.

JURISDICTION AND VENUE

2. Answering paragraph I of the complaint, the Coalition understands that Plaintiffs bring the action pursuant to “Idaho Code 10-1201 et seq. and Idaho Rule of Civil Procedure 57, for purposes of determining questions of actual controversy between the parties,” however, the Coalition is without knowledge or information sufficient to form a belief as to the sufficiency and applicability of the cited rules as it relates to any actual controversy, and therefore denies the same.

3. Answering paragraph II of the complaint, the Coalition is without sufficient knowledge or information to form a belief as to the truth of the allegations therein, however understands and believes them to be true as stated.

4. Answering paragraph III of the complaint, the Coalition is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

5. Answering paragraph IV of the complaint, the Coalition understands and believes that Defendant, Idaho Department of Water Resources (hereafter “IDWR”) is, and was at all times pertinent, an executive department of the State of Idaho.

6. Answering paragraph V of the complaint, the Coalition understands and believes that venue appears to be correct, however is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning the amount in controversy and appropriateness of jurisdiction and therefore denies the same.

GENERAL ALLEGATIONS

7. Answering paragraph VI of the complaint, the Coalition admits ASCC provides irrigation to water to its stockholders in Power and Bingham Counties in the State of Idaho and ASCC has decreed natural flow water rights in the Snake River and also storage water rights in Palisades and Jackson reservoirs, however, as to the remainder averments, the Coalition is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, and therefore denies the same.

8. Answering paragraph VII and VIII of the complaint, the Coalition is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, and therefore denies the same.

9. Answering paragraph IX of the complaint, the Coalition understands that on or about May 1, 2014, IDWR appears to have sent *Duffin* a Notice of Violation No. E2014-498, a copy of which appears to be attached to the Complaint for Declaratory Judgment as Exhibit “A”, however the letter speaks for itself and therefore the Coalition neither admits nor denies any of the remaining allegations.

10. Answering paragraph X of the complaint, the Coalition understands that on or about May 12, 2014 a response was sent on behalf of *Duffin* to IDWR regarding the Notice of Violation, and that a copy appears to be attached to the Complaint for Declaratory Relief as

Exhibit “B”, however the letter speaks for itself and therefore the Coalition neither admits nor denies any of the remaining allegations.

11. Answering paragraph XI of the complaint, the Coalition understands that IDWR appears to have issued correspondence regarding *Notice of Violation E2014-098; Cease and Desist Unauthorized Irrigation; Curtailment of Groundwater Use by Water District 120 Watermaster*, to Plaintiffs Jeffrey and Chana Duffin, a copy of which appears to be attached to Complaint for Declaratory Relief as Exhibit “C”, however, the Coalition is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein, and therefore denies the same.

12. Answering paragraph XII of the complaint, the Coalition admits a controversy of a justiciable nature exists between Plaintiffs and Defendants with regard to the interpretation of Idaho Code § 42-228.

13. Answering paragraph XIII of the complaint, the Coalition admits Plaintiffs appear to have accurately rewritten the current section of Idaho Code § 42-228.

14. Answering paragraph XIV of the complaint (mistakenly titled as paragraph “IX”), the Coalition is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies the same.

15. Answering paragraph XV of the complaint (mistakenly titled as paragraph “XIV”), the Coalition is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, and therefore denies the same.

16. Answering paragraph XVI of the complaint (mistakenly titled as paragraph “XV”), and Plaintiffs overall requested relief, the Coalition denies all allegations therein.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' complaint fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have failed to exhaust their administrative remedies.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs have either abandoned or forfeited any right to the waste or seepage water.

FOURTH AFFIRMATIVE DEFENSE

This well was drilled illegally and was never associated with an appurtenant water right.

Reservation of Right to Amend and Raise Further Defenses

As much of the information which Defendant-Intervenors need or may need to ascertain, the scope of potential defenses lies with Plaintiffs or with other persons not party to this suit. The Coalition hereby reserves the right to amend this answer to raise such additional defenses as may hereafter come to light during discovery.

THEREFORE, Defendant-Intervenors request the Court order as follows:

1. That Plaintiffs' complaint against Defendants be dismissed and that Plaintiffs take nothing thereby.
2. That under Plaintiffs' complaint the well cannot be operated and is not a recovery well pursuant to I.C. § 42-228.
3. For their attorney's fees incurred in defense of this action as permitted by Idaho Code § 12-121, and such other fees as the Court deems just.
4. For their costs and other disbursements incurred in the defense of this action.
5. For such other and further relief as the Court deems just.

DATED this 15th day of June, 2014.

BARKER ROSHOLT & SIMPSON LLP



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