

DEC 15 2017

DEPARTMENT OF WATER RESOURCES

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BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

	)	Docket No. P-WRA-2017-002
	)	
IN THE MATTER OF THE PETITION	)	<b>UPPER VALLEY STORAGE</b>
REGARDING STORAGE RESET IN WATER	)	<b>HOLDERS' RESPONSE TO</b>
DISTRICT 01 FILED BY MILNER IRRIGATION	)	<b>STATEMENT OF ISSUES</b>
DISTRICT	)	
	)	
	)	
	)	
	)	

COMES NOW, Fremont Madison Irrigation District (FMID), North Fork Reservoir Company (NFRCO), Idaho Irrigation District (IID) and New Sweden Irrigation District (NSID), acting for and on behalf of their members (hereinafter collectively referred to as "Upper Valley Storage Holders") hereby file this Response to those participants who have filed proposed Statement of Issues pursuant in the above entitled matter.

By not responding to any particular proposed issue, we do not imply that we fully support the issue or concur with the purpose of the issue. The response made herein to certain particular issues is due to Upper Valley Storage Holders' strong support or opposition to the particular issue to which we respond. Furthermore, it is our understanding that the submission of proposed

issues and these responses are only intended to identify the issues which should be addressed in the present contested matter and NOT to take a position as to which side of the issue we would argue as some participants have done in their proposed Statement of Issues. Once the issues of the case are decided, the parties should be given ample opportunity to “make their case” in the normal process of a contested case.

The Upper Valley Storage Holders strongly object to Issue No. 3 submitted by the Shoshone-Bannock Tribes. Nothing contained in the Fort Hall Indian Water Rights Agreement of 1990 grants the Shoshone-Bannock Tribes anything more than their storage rights - just as all other storage rights held by any other storage right holder. Furthermore, and most importantly, the decreed water rights are no different than other water storage right holders in the same reservoirs. The tribe’s attempt to make this an issue before the Director in this Milner contested matter is misplaced and inappropriate for the purpose of this contested matter. The Decree speaks for itself and the Director has no authority to grant a different or superior right to the Tribe’s storage right as compared to any other similarly decreed storage right of other storage right holders.

The Upper Valley Storage Holders also object to the inclusion of Issue No. 4 of the City of Pocatello’s proposed Statement of Issues which states: “Should reset of the water stored under the Winter Water Savings storage rights in American Falls Reservoir and Palisades Reservoir be limited by terms and conditions?” The winter water savings storage rights have been decreed with no such limitation and as a result of such decree, the Director has no authority to limit the same.

Finally, the Upper Valley Storage Holders agree with the City of Pocatello's proposed Statement of Issues No. 3: "How to resolve the reset issue without undermining the terms and operation of the Refill 1 and Refill 2 stipulations and partial decrees, and how unallocated storage will be administered."

As stated in our Statement of Issues, the Upper Valley Storage Holders reserve their right to amend, add or object to issues as the matter and case unfolds before the Director and also reserve the right to participate as individual parties if deemed necessary at any point during these proceedings.

DATED this 15<sup>th</sup> day of December, 2017.

  
Jerry R. Rigby

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY  
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 15<sup>th</sup> day of December, 2017.

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