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*Attorneys for the New York 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

**PRE-HEARING MOTIONS SUBMITTED  
BY THE NEW YORK IRRIGATION  
DISTRICT**

COMES NOW, the New York Irrigation District by and through its attorneys of record, McDevitt & Miller, LLP, Chas F. McDevitt and in response to the *Scheduling Order; Notice of Hearing; Order Authorizing Discovery* under date of October 14, 2014, files the following Prehearing Motions.

These Motions are based upon all documents which are part of the record in this matter to date on all motions and arguments submitted herein prior to this date.

- i. Motion incorporating by reference as if set forth at length herein the Motions filed herein by counsel for and on behalf of the Ditch Companies.
- ii. Motion to Dismiss based upon the failure of the Idaho Department of Water Resources and/or the Hearing Officer to have jurisdiction over an essential party to wit, the United States of America.

The Director of the Idaho Department of Water Resources (Hearing Officer) herein has been put on notice by the Department of Justice of the United States of America, counsel for the Bureau of Reclamation and the United States of America, that the proceedings initiated herein as “Contested Case” by the Director is not a “suit for the general adjudication or administration of water rights”. Thus the sovereign immunity of the United States is not waived under the McCarran Amendment 43 U.S.C. § 666. *United States v. Puerto Rico, et al*, 287 F. 3d 212(1<sup>st</sup> Cir. 2002).

The Contested Case initiated by the Director of the Idaho Department of Water Resources is not a “suit” but an administrative proceeding which the Director is authorized to undertake by Idaho Statute but which does not meet the standard required to waive the immunity of the United States under the McCarran Amendment.

The Bureau of Reclamation operates the dams in which water is stored for the benefit of the ditch and irrigation companies, as well as other stated purposes. The Bureau of Reclamation holds water rights to a substantial portion of all of the water stored in the dams in Water District 63 and is an essential party to any effort to determine allocation of the waters stored behind said dams, the quantity of water released for specific purposes from said dams and the timing of the release of said water, all of which are critical in the “accounting” of said stored water. In no Order covering these matters entered herein can the Director compel compliance by the United States of America with such Order. This effectively renders any Order issued as a result of the contested case, a nullity.

## CONCLUSION

Wherefore the New York Irrigation District respectfully requests the relief sought in the Pre-Hearing Motions submitted by the Ditch Companies and the dismissal of the Contested Case based upon the failure of the Department and the Director to have jurisdiction over the United States of America, a necessary and essential party.

Dated this 25<sup>th</sup> day of October, 2014.

MCDEVITT & MILLER LLP

BY   
Chas F. McDevitt  
Attorneys for New York Irrigation District

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of October, 2014, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

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BY: Heather Houli, Legal Asst.  
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