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DEPARTMENT OF WATER RESOURCES DEPARTMENT OF WATER RESOURCES

**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

**RESPONSE TO PRE-HEARING
MOTIONS**

United Water Idaho Inc. (“United Water”), through its counsel Givens Pursley LLP, files this *Response to Pre-Hearing Motions* (“*Response*”) in the above-captioned matter pursuant to the Director’s October 14, 2014 *Scheduling Order; Notice of Hearing; Order Authorizing Discovery* (“*Scheduling Order*”).¹

On October 28, 2014, a number of parties filed pre-hearing motions and other pleadings as directed by the *Scheduling Order*, including the Ditch Companies,² Pioneer Irrigation District “Pioneer”), New York Irrigation District (“NYID”), the City of Boise (“City”), and the Boise

¹ United Water is filing this *Response* the day after the *Scheduling Order*’s November 11, 2014 deadline because of the Veterans Day holiday on the 11th. IDAPA 37.01.01.056.

² The Ditch Companies are Ballentyne Ditch Company, Boise Valley Irrigation Ditch Company, Canyon County Water Company, Eureka Water Company, Farmers’ Co-operative Ditch Company, Middleton Mill Ditch Company, Middleton Irrigation Association, Inc., Nampa & Meridian Irrigation District, New Dry Creek Ditch Company, Pioneer Ditch Company, Settlers Irrigation District, South Boise Water Company, and Thurman Mill Ditch Company.

Project Board of Control (“Boise Project”).³ Mainly, these submissions ask the Director to:

1. dismiss or stay the proceeding;⁴
2. reconsider his prior decision not to disqualify himself as the Hearing Officer or to appoint an independent Hearing Officer;⁵
3. further define the issue addressed in this contested case;⁶
4. modify the *Scheduling Order*;⁷
5. disclose all ex parte communications by the Director and IDWR staff concerning the issue of storage accounting;⁸ and
6. produce documents in IDWR’s files related or potentially related to the contested case’s subject matter.⁹

United Water believes that none of pre-hearing motions described in the first four categories listed above should be granted, and trusts that the last two (if granted) will be handled appropriately.

This proceeding should not be dismissed on grounds that the United States of America is an indispensable party—it is not. Nor should it be dismissed on grounds that *Asarco Inc. v. State*,

³ On October 27, 2014, United Water submitted a letter informing the Director and the other parties that United Water would not file any pre-hearing motions by October 28, but might file motions on the merits of the case at a later time.

⁴ *Pre-Hearing Motions Submitted by the Ditch Companies* (“*Ditch Companies’ Motions*”) at 5-8; [*Boise Project’s*] *Motion to Dismiss Contested Case Proceedings and Initiate Negotiated Rulemaking and Memorandum in Support*. Pioneer, NYID, and the City joined in this part of the *Ditch Companies’ Motions*.

⁵ *Ditch Companies’ Motions* at 2-4. Pioneer and NYID joined in this part of the *Ditch Companies’ Motions*.

⁶ *Ditch Companies’ Motions* at 8-9. Pioneer, NYID, and the City joined in this part of the *Ditch Companies’ Motions*.

⁷ *Ditch Companies’ Motions* at 9-11. Pioneer, NYID, and the City joined in this part of the *Ditch Companies’ Motions*.

⁸ *Ditch Companies’ Motions* at 4-5; *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*. Pioneer and NYID joined in this part of the *Ditch Companies’ Motions*.

⁹ *Boise Project Board of Control’s Document Request*.

138 Idaho 719, 69 P.3d 139 (2003) requires rulemaking under the Idaho Administrative Procedure Act (“APA”)—it does not. The APA and the Department’s Rules of Procedure clearly allow the Director to initiate and proceed with contested cases such as this. I.C. 67-5240; IDAPA 37.01.01.104.

The Director already has denied the Ditch Companies’ *Motion to Disqualify* and has determined that the question presented should not be redefined. The arguments in the *Ditch Companies’ Motions* do not warrant different results.

This contested case should not be dismissed, stayed, or clarified. Rather, it should proceed in accordance with the *Scheduling Order* for purposes of addressing the issue defined in the Director’s October 22, 2013 *Notice of Contested Case and Formal Proceedings, and Notice of Status Conference*.

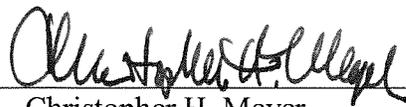
The Department’s October 10, 2014 *Document Overview* appears to list many of the documents requested by the Boise Project. United Water requests that the Department provide notice to all other parties, together with an index, of any documents it provides to any party or makes available on its website or for inspection.

United Water expects that IDWR will disclose ex parte communications concerning the subject matter of this case to the extent disclosure is required by law.

DATED this 12th day of November, 2014.

Respectfully submitted,

GIVENS PURSLEY LLP

By 
Christopher H. Meyer

By 
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November, 2014, the foregoing was filed, served, and copied as follows:

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