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DEPARTMENT OF
WATER RESOURCES

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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

**STATEMENT OF DITCH COMPANIES
PURSUANT TO THE NOTICE OF CONTESTED
CASE FOR RESERVOIRS IN WATER DISTRICT
63**

COMES NOW, 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 (hereinafter collectively known as "Ditch Companies"), by and through their counsel, Sawtooth Law Offices, PLLC, and submit this Statement pursuant to the *Notice of Contested Case and Formal Proceedings and Notice of Status Conference* issued by the Director of the Idaho Department of Water Resources on October

STATEMENT OF DITCH COMPANIES PURSUANT TO THE NOTICE OF CONTESTED
CASE FOR RESERVOIRS IN WATER DISTRICT 63 - Page 1

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22, 2013.

1. The Ditch Companies consist of irrigation districts and canal companies located in Basin 63. The irrigation districts deliver water to lands to which they have apportioned their water rights pursuant to Title 43 of the Idaho Code. The canal or ditch companies deliver water to land owners who hold shares issued by the companies. The Ditch Companies own natural flow water rights that they divert from the Boise River or other tributaries in Basin 63 and deliver through their canal systems. To ensure that the lands served by Ditch Companies have adequate water supplies as the natural flows of the Boise River decline, they have rights to divert and deliver portions of the waters stored in one or more of the three Boise River reservoirs; Lucky Peak, Arrowrock and Anderson Ranch.

2. These same Ditch Companies were also parties to the *U.S. v. Pioneer Irrigation District*, 144 Idaho 106,157 P.3d 600 (2007) in which the Idaho Supreme Court recognized the important role of the irrigation entities and their landowners/shareholders in diverting the stored water and putting the water to beneficial use. The Idaho Supreme Court held that the Ditch Companies and their landowners/shareholders have a beneficial ownership interest in the storage water rights and a remark recognizing such ownership has been placed on the water rights which have been partially decreed for the Lucky Peak, Arrowrock and Anderson Ranch Reservoirs.

3. These same Ditch Companies have also been engaged and are parties to the *Basin Wide Issue No. 17*, currently on appeal before the Idaho Supreme Court, and which is referenced in the Director's *Notice of Contested Case*. The Ditch Companies' position in *Basin Wide Issue No. 17* has been extensively briefed and argued before the District Court for the Snake River Basin Adjudication and has been briefed before the Idaho Supreme Court. The Ditch Companies will not

restate those arguments herein but the briefs and arguments are hereby incorporated herein as is necessary or appropriate at this stage in this *Contested Case*.

4. With regard to the accounting procedures for the Basin 63 reservoirs, the Ditch Companies' understanding is that the storage accounts of the Ditch Companies have historically not been charged when water is released, or storage space is vacated, for flood control or other operational purposes. This is because, among other things, water released for flood control or other operational purposes is not being beneficially used by the Ditch Companies for irrigation purposes. In addition, the Idaho Department of Water Resources has placed conditions on junior priority water rights which allow diversion of those junior priority water rights only when water is being released from the reservoirs for flood control purposes. The Ditch Companies expect this accounting to remain the same. The Ditch Companies also expect the Idaho Department of Water Resources to continue to condition future proposed water rights to protect the right to fully fill storage water rights, in priority, when water is released, or storage space is vacated, for flood control or other operational purposes. So long as the accounting procedures continue to protect existing storage water rights, allowing them to be filled, credited and/or counted in priority when water is released or storage space is vacated for flood control purposes, and so long as the Idaho Department of Water Resources continues to condition future water rights so that storage water rights, and their priorities, continue to be protected when water is released or storage space is vacated for flood control purposes, then the Ditch Companies have no objections to the current accounting methods or procedures.

5. To the extent the Idaho Department of Water Resources, State of Idaho, any other storage right holder or water user in Basin 63 disagrees with the Ditch Companies' understanding

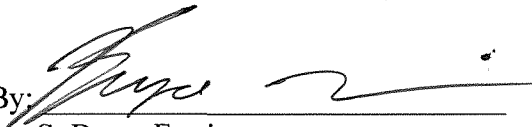
with regard to the historic practices and/or accounting for the storage water rights then the Ditch Companies would have objections and concerns and the Ditch Companies reserve the right to evaluate those issues when and if presented. Furthermore, to the extent the Idaho Department of Water Resources, State of Idaho or any other water user request modifications or clarifications to the historic practices and/or accounting for the storage water rights in Basin 63 then the Ditch Companies reserve the right to evaluate those requested modifications when and if presented.

6. The Ditch Companies reserve all arguments concerning the jurisdiction of the Idaho Department of Water Resources to determine the issues raised in *Basin Wide No. 17*, including, but not limited to, whether a storage water right is satisfied or filled when water is released or storage space is vacated for flood control operations, and the Ditch Companies do not waive those arguments by submitting this Statement.

7. The Ditch Companies also reserve all arguments concerning the authority of the Director of the Idaho Department of Water Resources to initiate a contested case under these circumstances, and the Ditch Companies do not waive those arguments by submitting this Statement.

DATED this 4th day of December, 2013.

SAWTOOTH LAW OFFICES, PLLC

By: 
S. Bryce Farris