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IN THE SUPREME COURT OF THE STATE OF IDAHO

SCHWEITZER BASIN WATER COMPANY, Petitioner/Respondent, vs. SCHWEITZER FIRE DISTRICT, Respondent/Appellant.	))))))))))	**Supreme Court Docket No. 44249** Bonner County Docket No. CV-2015-434

RESPONSE TO BRIEF OF *AMICUS CURIAE*

Appeal from the District Court of the First Judicial District
of the State of Idaho, in and For Bonner County

Honorable Barbara Buchanan,
District Judge, Presiding

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RESPONSE TO CLAIMED INTEREST OF *AMICUS CURIAE*

While the Company appreciates the role of the State Fire Marshal (the "State") as provided under the Idaho Code, the State's desire to be involved in this appeal is misplaced. Perhaps that results from the State's misunderstanding of the factual background of this matter. The following are some examples:

1. The Schweitzer Basin Water Company (the "Company") has not historically failed to maintain fire suppression flows. The State alleges that the Company has historically failed to maintain fire suppression flows at fire hydrants that it had authorized to be attached to its water system. Brief of *Amicus Curiae*, p. 2, ¶2. That statement is incorrect, but the State then uses it to try to justify the Schweitzer Fire District (the "District") seeking to enforce against the Company an International Fire Code ("IFC") provision that requires fire hydrants to maintain constant water pressure of 1,000 gpm for one hour. *Id.* p. 3, ¶1. In order to gain perspective of what is the actual factual background of this case, the following is a brief chronology of the historic fire flow situation at issue:

A. The original design in the 1960's of the Company's water system was only for domestic water. There was no consideration for fire flows. That design was approved by the Idaho Department of Environmental Quality ("DEQ"). R. p. 73.

B. The District was established March 8, 1987, but there was no firefighting equipment and only limited volunteers. Brief of *Amicus Curiae*, p. 2, footnote 9.

C. The Company applied to the State of Idaho for grant funds in installing fire hydrants in 1989 on two (2) existing water systems. The request was denied because the water systems were both private. R. p. 45, ¶4.

D. The majority of the fire hydrants that are currently on the Company's system were installed and connected to the Company's water main from 1992 to 1994. Those fire hydrants were installed by individual residents and condominium associations before the roads were to be paved from funds of Local Improvement District 93-1. Those hydrants, and all of the other hydrants presently on the Company's system, were and are privately owned. The individual owners and condominium association owners have always maintained their respective fire hydrants. *Id.*

E. After 1994, the District's fire chief established requirements for installation of fire hydrants. The requirements were all related to location, accessibility, etc. There were no requirements or references to water flows from fire hydrants. These location and accessibility requirements were sent to the Bonner County planning department to use when owners/developers requested a conditional use permit ("CUP") for construction of multifamily buildings. The CUP process required approval from the District's fire chief as a condition of CUP approval, so that owners/developers had to meet the fire chief's requirements to install fire hydrants near their developments. R. pp. 46, ¶5, 94-95.

F. By letter dated October 13, 1996, the District's fire chief advised the Company that he would require 500 gpm fire flow from fire hydrants pursuant to the Uniform Fire Code. R. p. 102, ¶6.

G. In the June 14, 2013 Notice of Violations, the District's fire chief informed the Company that fire flows at 1,000 gpm would be required from the fire hydrants on the Company's system. R. pp. 17 – 20.

H. Fire hydrants were installed by private parties on the Company's system in 2004, 2005, 2007 and 2014 for multifamily buildings. Those fire hydrants were approved by the District's fire chief as a part of the CUP process. The fire chief therefore accepted all of those hydrants. For the hydrant installed in 2014, the fire chief acknowledged and documented that "...water flows and pressures at this fire hydrant may not meet current requirements...." R. p. 102, ¶6. The District's fire chief was using the authority given him in IFC Appendix B, Section B 103.1, which provides that the fire chief is authorized to reduce the fire flow for isolated buildings or a group of buildings in rural areas or small communities where the development of full fire-flow requirements is "impractical." Brief of *Amicus Curiae*, Exhibit C, I.F.C., Appendix B, Section B 103. The IDAPA 58.01.08, Section 501.18.b also provides the fire chief with authority to accept a system's fire flow capacity. The IFC and IDAPA both recognize that conditions may occur where it is "impractical" to achieve full compliance with code standards, and the fire chief can accept those conditions.

The State provides no explanation as to why the District's fire chief would now be trying to back pedal by requiring higher fire flows from hydrants that he previously approved at lower fire flows, or why the fire chief is attempting to selectively enforce the IFC against

only one of the four private water companys currently serving domestic water customers on Schweitzer Mountain.

2. Although not designed for fire suppression, the Company's water system provides adequate fire flows. Another example of the State's misunderstanding of the facts is that the State takes the position that the Company should meet the IFC standard of 1,000 gpm fire flow. Brief of *Amicus Curiae,* p. 3, ¶1. The Idaho Surveying and Rating Bureau ("ISRB") has given credit for all of the hydrants on the Company's water system. The current ISRB fire rating at Schweitzer Mountain is a 5. This is similar to the rating in Sandpoint (4), Ponderay (5), Kootenai (5), Dover (5), and most other fire districts with similar issues. The ISRB therefore considers the fire suppression on Schweitzer Mountain to be adequate. R. p. 47, ¶5.

3. The Company has never taken the position that it is exempt from the IFC. The State alleges that, because the Company's system predates the formation of the District, the Company contends that its water system is exempt from enforcement of the IFC. Brief of *Amicus Curiae*, p. 3, ¶2. While it is true that the Company was formed in the 1960's and therefore does predate the formation of the District, the Company has never taken the position that it is exempt from the IFC because the Company's water system is private. When the Company's water system was designed and constructed, the IFC was not in place. Even today, the standards of the IFC are still not required to build a water system. Although the District's fire chief has jurisdiction over

buildings and structures connected to a water system, he does not have jurisdiction over the water system itself. Idaho Code §41-259.

4. The Company has cooperated to allow owners of real property to install private hydrants on its water system and use them for fire protection. A fourth example of the State's misunderstanding of the facts is that the State alleges that the Company, in 1992, began allowing homeowners to purchase fire hydrants and pay a fee to hook up to its water system. Brief of *Amicus Curiae*, p. 3, ¶1. Before the Company allowed fire hydrants to be installed, however, starting in its 1992 rules and regulations, the Company stated that only domestic water, not fire protection water, was being supplied (R. p. 49, ¶5) and the Company never charged for connecting a fire hydrant to its water system. It is also important to note that, as requested by Schweitzer Mountain homeowners, the Schweitzer Mountain resort owners, and the newly-formed District, the Company did allow the water from its water system to be used for fire protection through private owners installing their own fire hydrants on the Company's water system. R. p. 45, ¶4.

5. The District, in attempting to take enforcement action against the Company, cited its authority as being Idaho Code §41-256(1), and the jurisdictional authority of the District has been the focus of this case. The State alleges that the district court improperly limited its examination of the issue of the Fire District's jurisdiction to interpretation of Idaho Code §41-259. Brief of *Amicus Curiae*, p. 6, ¶1. What actually occurred was that the District, in its Ordered (sic)

Demanding Repair and Remedy of Deficiencies in Water System dated May 3, 2014, stated that the District made the order pursuant to Idaho Code §41-256(1). The District did not cite any other alleged enforcement authority. The district court stated its belief that Idaho Code §41-259 was the authority that the District was attempting to use to say that the District had the ability to order the Company to do certain things, and the district court's concern was that section did not seem to apply to what the District was trying to accomplish in this case. Tr. March 25, 2015 Order To Show Cause, p. 4, Ll. 18-25. The district court also noted that the District had not cited any case law to support its argument that it had jurisdiction over the Company. *Id.* p. 4, Ll. 16-20.

6. A decision from this Court affirming the district court would uphold legislative intent and would not adversely affect the mission of the State or its agents. A final example of the State's misunderstanding of the background facts is the State's stated fear that a decision from this Court affirming the district court's decision would impair the legislative purpose of the statutes relating to fire districts and the State, and would also limit the application and scope of the IFC in Idaho. Brief of *Amicus Curiae*, p. 6, ¶2. The actual result of this Court affirming the district court's decision, which was that the District had no jurisdiction over the Company's water system, would be to uphold the legislative intent of the jurisdiction of fire code officials. A correct reading of the jurisdictional statute would also protect the Company from an overreaching governmental entity.

RESPONSE TO ARGUMENT

I. The district judge correctly determined that Idaho Code §41-259 defined the scope of enforcement authority of the District.

In Section I of the State's *amicus* brief, purportedly relating to the jurisdiction for enforcement of the IFC, the State appears to be attempting to raise new legal arguments on appeal. For example, the State includes a whole section on Fire Protection District Law. Brief of *Amicus Curiae*, pp. 1-2. The State should not be allowed to raise those issues for the first time on appeal. "Generally, issues not raised below will not be considered for the first time on appeal. Therefore, as [appellant] failed to raise these issues below, they have not been preserved for appeal and we will not address them." *McCoy v. Craven*, 2010 Ida. App. Unpub. LEXIS 176, *16, 2010 WL 9587468 (Idaho Ct. App. May 25, 2010.)

It was the District's job to raise any such issues at the trial court level. The State should not be allowed to add new legal arguments to this appeal. The State has not shown from the record that the District raised the legal issues during the proceedings in this case, or that the district court erred in its consideration of the issues.

> "It is a general rule of wide application that an appellate court will indulge all reasonable presumptions in favor of the correctness of the judgment, order, or decree from which the appeal was taken. In other words it will be presumed on appeal, absent contrary showing, that the trial court acted correctly and did not err, and that the court will correctly settle such questions as may arise in further proceedings in the cause. Indeed error is never presumed on appeal, but must be affirmatively shown by the record; and, since the appellate court need not search the record for possible errors, the burden of so showing it is on the party alleging it,

or, as sometimes stated, the burden of showing error affirmatively is upon appellant."

Judy v. Reilly Atkinson & Co., 59 Idaho 752, 757, 87 P.2d 451, 453-454 (1939). Accord: *Greenfield v. Wurmlinger*, 158 Idaho 591, 598, 349 P.3d 1182, 1189 (2015).

The State begins its new legal arguments by stating that the 2012 Idaho Fire Code sets the standard for water pressure fire-flow requirements for "buildings," including "dwellings." Brief of *Amicus Curiae*, p. 9, ¶1. It is important to also recognize, however, that those requirements do not apply to water systems.

The State contends that the district court found that the District had no jurisdiction to enforce the IFC fire flow requirements against a water company providing water to private fire hydrants. That contention, however, misstates the district court's decision. *Id.* p. 9, ¶2. What the district court actually found was "...that the Company has met its burden of proof on the issue of jurisdiction, and that Idaho Code §41-259 does not apply to the Company's water system." R. p. 166, ¶1. Under Idaho Code §41-259, a fire district's agent could inspect the buildings and premises of the Company, and that agent could order remediation or removal of any building or other structure which violated the IFC and therefore was especially liable to fire, and so situated to endanger life, other buildings or structures, or that building or structure. Idaho Code §41-259. What that statute does *not* do is to authorize a fire district agent to order remediation or removal of a water system that is designed and operated to only provide domestic water. The district court's decision in this case therefore has no implication limiting the

jurisdiction of the State or its representatives because that decision is entirely consistent with the Idaho authorities defining the scope of that jurisdiction.

A. *The district court correctly interpreted and applied Idaho Code §41-259 in defining the enforcement authority of the District.*

The State argues that the district judge failed to both give Idaho Code §41-259 liberal construction, and erred in failing to give any effect to the "building and premises" language stated in the first paragraph of the statute. Brief of *Amicus Curiae*, p. 11, ¶3. The State's criticism results from its misinterpretation of the statute.

Both the phrases "buildings and premises," and "buildings and structures," need to be in the statute, and need to be in separate paragraphs. That is because those two phrases address two separate and distinct issues: Access and remedy.

In the first paragraph of Idaho Code §41-259, the word "premises" is included to assure that the code official can have *access* onto the property in which the buildings and structures are located – the code official has to cross the premises to get to the building or structure. If this paragraph did not have the "premises" language, a non-compliant building owner would deny the code official the authority to enter the property for inspection purposes.

In the second paragraph of Idaho Code §41-259, the phrase "buildings and structures" is there to clearly define what the code official may seek to *remedy*. By other language in that paragraph, which excludes single family homes and buildings on farms of a certain size from enforcement authority, the legislature identified the limits for enforcement by the code official. The State is not actually requesting liberal construction

of the "premises" term, but instead is seeking to transplant it to another paragraph of Idaho Code §41-259. The legislature obviously had the opportunity to give the code official authority to enforce fire codes against premises, or even water systems, but did not do so.

From the beginning of this case, the district court wanted to give effect to the legislature's intent for Idaho Code §41-259. Tr. March 25, 2015 Order To Show Cause, p. 25, Ll. 14-16. The district court began with the literal words of the statute itself. *Id.* p. 4, l. 18-p. 5, l. 13. The district court gave effect to the unambiguous and clearly-expressed intent of the statute, as granting enforcement authority to the District for buildings and structures. *Id.* p. 25, l. 20-p. 26, l. 13. The district court accurately interpreted Idaho Code §41-259 as not giving enforcement authority over the Company.

> "The objective of statutory interpretation is to give effect to legislative intent." "When interpreting a statute, the Court begins with the literal words of the statute . . . ." "If the statutory language is unambiguous, the clearly expressed intent of the legislative body *must* be given effect . . . ." This Court does not have the authority to modify an unambiguous legislative enactment." (Internal citations omitted.)

Hoffer v. Shappard, 160 Idaho 870, 882, 380 P.3d 681, 695 (2016).

The literal application of the statute makes perfect sense, based upon a correct understanding of the concept of access versus remedy.

If the term "premises" were intended to include the Company's water lines, as the State argues, would that interpretation then also include all other utilities either in or above the ground, such as gas distribution pipelines, overhead power lines, and any other

public utilities? The State's interpretation of the statute could subject the natural gas and electrical power companies, as well as what could be more than 2,000 water purveyors in Idaho, to whatever the local fire chief decided to do under the Idaho fire laws.

Contrary to the State's contention, the district court's decision correctly maintains the limits of the District's enforcement ability. It is uniquely the province of the legislature, and not the State, to change the wording of Idaho Code §41-259 to enlarge the jurisdictional boundaries of state fire officials.

B. *The district court correctly identified the limits of the District's enforcement jurisdiction based upon the District's stated basis for enforcement action against the Company.*

The District, in its Ordered (sic) Demanding Repair and Remedy of Deficiencies in Water System, cited as authority the IFC as stated in Idaho Code §41-253(1) through §41-269 and IDAPA 18.01.50. R. p. 25. The District did not cite or make any reference to its enabling statute, being the Fire Protection District Law, Idaho Code §31-1401 *et seq*. The District did not argue that law. The district court was therefore given no reason to analyze that law.

The State is the only one to make these arguments. All the District does is to point to them by reference. This should not be allowed. The Washington Court of Appeals has persuasively stated: "On review, we decline to address issues raised for the first time on appeal, in reply briefs, *or only in amicus briefs.*" (Emphasis added.) *Joy v. Dep't of Labor & Indus.*, 170 Wn. App. 614, 630, 285 P.3d 187, 194 (Wash. Ct. App. 2012). Accord: *Downing/Salt Pond Partners, L.P. v. Rhode Island*, 643 F.3d 16,

28, 2011 U.S. App. LEXIS 10358, *33-34, 41 ELR 20191 (1st Cir. R.I. 2011). Because the District failed to raise the issue, the State should not be allowed to try to do so for the first time on appeal.

In its brief, the State argues various purposes, power and duties of fire districts. The State fails, however, to cite anything whatsoever in the Fire Protection District Law that would grant any enforcement authority to any representative of a local fire district.

The issue on appeal is whether the District had jurisdiction for its intended enforcement action against the Company. The Fire Protection District Law has no provision of enforcement jurisdiction for fire district representatives. The district court should not be faulted by the State for failing to provide an analysis when there is nothing in the Fire Protection District Law to analyze.

C. *The Company has never taken the position that it was exempt from compliance with the IFC simply because it is a privately owned company.*

The State argues that the Company "...contended that because it is a privately owned water company and not the proper owners (sic) of the fire hydrants hooked up to the system, it cannot be compelled to make modifications to comply with the IFC." Brief of *Amicus Curiae*, p. 14, ¶1. That argument is incorrect. Instead, the Company stated in its Response to Order For Remedy and Request For Contested Hearing dated June 13, 2014, "...that the District did not have jurisdiction over the Company's private water system." R. p. 14, ¶9. The Company's position has been consistent from the

beginning. In the Company's Petition For Writ of Prohibition, the Company stated its position that the District was without any statutory authority, jurisdiction or right to pursue its enforcement action against the Company. R. p. 386, ¶4. Specifically, the Company did not claim exemption, it only stated the fact that the District lacked jurisdiction.

Throughout its history, the Company has had, and still maintains today, a good working relationship with the governmental agencies that do have jurisdiction over the Company. For example, the Idaho Department of Environmental Quality ("DEQ") is the Company's primary governing agency. The Company continued in good standing with DEQ even after the District attempted the enforcement action that constitutes the basis of this case. R. p. 402 – 419. In its 2015 report on the Company's system, DEQ's position on fire flow was as follows:

> "The DEQ Engineering Department has reviewed the information provided regarding fire flow issues and has determined that since the SBWLLC (Company) was built in the 1960's and prior to fire flow or regulation, the current Rules which require that any drop in pressure below 20 psi in distribution, the operator must immediately provide public notification, disinfect the water system, and notify the DEQ.
>
> Although there may be pressure deficiencies during a fire emergency or routine hydrant flushing, it is preferable to keep the hydrants in place for the safety and protection of the residents and their property. The Department is not recommending the removal of the existing fire hydrants in order to reduce or correct any fire flow issues during flushing or fire events."

R. p. 415, ¶5 – p. 416, ¶2.

The Idaho Public Utilities Commission ("IPUC") also regulates the Company. Tr. March 23, 2016 hearing, p. 84, Ll. 16-19. It is also in good standing with IPUC. *Id.* p. 116, Ll. 21-24. It is instructive as to the motive of the District in this case that the regulation of the Company by the IPUC did not begin until 2015 and was caused by complaints from persons connected to the District. During its comment period on the beginning of the regulation of the Company, IPUC received 41 comments. Thirty of the Company's customers wrote positive comments to the IPUC. Of the other 11 comments, seven were negative comments from persons connected with the District. R. pp. 200-201 and 210-218.

The Company has willingly complied with each of those two governmental entities according to the jurisdictional authority of each. The Company is also in compliance with the District as to the scope of its enforcement authority under Idaho Code §41-259. If the State or the District is dissatisfied with the current jurisdictional authority granted by the Idaho legislature, that legislature, and not this Court, is the proper forum.

II. The Company has not changed the character of its services to an extent of losing its grandfather status, and it has not waived that status.

As to the grandfathered-rights discussion in the State's brief, once again, the State is attempting to raise that issue for the first time on appeal. Brief of *Amicus Curiae*, p. 16, ¶1 - p. 18, ¶2. As more fully discussed above, regarding the State's attempt to argue the state fire protection laws, this Court should decline to address the

grandfathered-rights issue which the State attempts to raise for the first time in its *amicus* brief.

The District only mentions the grandfathered-rights status on one occasion (R. p. 253), but that reference is made in regard to the District's objection to the attorney fees award to the Company. The grandfathered-rights status of the Company did not constitute an argument of the District's defense so as to preserve that issue for appeal. "The rule is well settled that a party cannot avail himself of a defense for the first time in the appellate court, nor will a question not raised in the trial court be considered on appeal." *Grant v. St. James Mining Co.*, 33 Idaho 221, 222, 191 P. 359, 359, (1920).

Nevertheless, the State begins this portion of its argument by stating that the Company "...raised in its supporting documents that it has 'grandfathered rights' that exempt it from enforcement of the IFC." Brief of *Amicus Curiae*, p. 16, ¶1. [Although that argument is not about any of the issues on appeal (R. p. 311, ¶3), the Company has responded to it for the sake of thoroughness.] That argument is not true. Instead, the Company has stated its belief that any attempt by the District to enforce the Order would be in contravention of the grandfathered rights recognized by the May 6, 2014 letter from the DEQ. R. p. 433-434, ¶8.

In the May 6, 2014 letter from DEQ to the District's fire chief, DEQ expressly recognized the Company's grandfathered rights:

> "It is agreed by all parties that though there may (be) pressure deficiencies when flushing the hydrants or even if there was a fire, it is preferable to keep the hydrants in place. Also discussed was an alternative to correct the fire flow

> pressure issue, which would be to remove the fire hydrants within the distribution system. However, this may not be in the best interests of the water users on the SBWCLLC system for protecting life and property.
>
> For your reference, the SBWCLLC water system was built in the 1960's prior to the first DEQ drinking water regulations....if the SBWCLLC plans to 'substantially modify' or add new service areas, these projects would trigger the requirements for maintaining a minimum 40 psi pressure during peak hour demand, excluding fire flow."

R. p. 447.

The State also argues that "(t)he district court relied heavily on SBWC's assertions of private ownership and grandfathered rights to determine that only a legal question as to jurisdiction existed." Brief of *Amicus Curiae*, p. 16, ¶2. Not only does that statement lack any citation to any document in the record, but also it is not true. In fact, the word "grandfathered" does not even appear in the Memorandum Decision and Order Granting Writ of Prohibition from which the District takes this appeal. R. pp. 162-170.

The State also alleges that "...(t)he district court erred in failing to consider the question of fact that existed in the record as to whether SBWC had changed the character of its services from providing only potable water to also providing fire suppression services." Brief of *Amicus Curiae*, p. 16, ¶1. That allegation is incorrect for two reasons. First, the district court, in granting the motion of the Company for hearing the case on the papers, pursuant to I.R.C.P. 74, expressly stated as follows:

> "Upon consideration of the arguments presented by the parties, together with the sworn testimony and the foregoing

> affidavits, this Court is not persuaded that the District has jurisdiction over the Company under Idaho Code §41-259. The Court agrees with the testimony in the Bailey and Larsen (sic) affidavits that the Company's water system can in no way be construed as a "building or other structure which, for want of repairs...or by reason of age or dilapidated condition, or due to violation of the International Fire Code or from other causes, is especially liable to fire,... I.C. §41-259."

R p. 166, ¶1.

It is therefore clear that the district court did give due consideration to the facts in reaching the decision to grant the petition for writ of prohibition. R. p. 166, ¶1.

The second incorrect statement by the State in this regard is its allegation that "...SBWC had changed the character of its services from providing only potable water to *also providing fire suppression services."* (Emphasis added.) Brief of *Amicus Curiae*, p. 16, ¶1. The State did not, and cannot, cite this Court to any portion of the record supporting its contention that the Company provided fire suppression services. To the contrary, the record is clear that every user, and the District itself, was on notice that the Company was expressly *not* providing anything beyond the supply of domestic water. R. p. 164, ¶2 – 165, ¶2.

After agreeing to the existence and validity of grandfather rights, even under the IFC, the State argues that the Company because of "...expansion and change of use...." has lost those rights. Brief of *Amicus Curiae*, p. 17, ¶2. The problem with this argument is that none of the bullet point items listed constitutes either "expansion" or "change of use." The Company instead has taken several actions to improve its water service to its users and to increase its reserve water supply. R. pp. 39-41. There has

also been no change of use. The Company has continued in its historic role to provide domestic water service to its customers.

When considering the improvements that the Company has made on its system, it is difficult to square the State's arguments with the District's stated concerns for the safety of the residents of the Company's service area. If there were really such a pressing safety concern, why has the District delayed over 19 years before attempting to take enforcement action against the Company? If the District were truly concerned about what it claims are insufficient fire flows, why hasn't the District taken actions on its own part to address that concern. Those actions could have included mitigating the alleged inadequate water supply by efforts to keep additional construction from taking place, trying to require sprinklers in buildings with inadequate fire suppression water supplies, securing additional large diameter supply hoses to bring water to poorly served areas, adopting preplans, establishing strategies and tactics to deal with the water supply concerns, making educational outreach to property owners the District contends are affected, or seeking automatic mutual aid agreements with nearby fire agencies. The May 6, 2014 letter to the District's fire chief from DEQ confirmed DEQ's understanding that the Company and the District would work together to resolve the fire hydrant issue in the best interests of the Schweitzer community. R. p. 405. We can only wonder how many improvements and mitigation factors could have been funded by the money that the District has forced the parties to spend litigating this case.

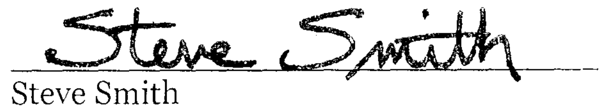
As recently as 2014, DEQ recognized the fact that the Company had grandfathered rights in its existing water system. DEQ also stated that the Company would only trigger the requirement for maintaining a 40 psi pressure during peak hour demand, excluding fire flow, if the Company had plans to "substantially modify" or "add new service areas." R. p. 416, ¶2. Neither of those events has occurred since the date of that letter.

The State's final argument is that the district court erred in narrowly focusing the issues as only the legal question of jurisdiction without further investigation of the record. Brief of *Amicus Curiae*, p. 18, ¶1. The district court should not be subject to criticism for doing its job well and dealing with the threshold issue of jurisdiction before determining other issues in this case.

CONCLUSION

The district court correctly interpreted and applied the statute defining the scope of enforcement authority of the District to "buildings and structures." That was an accurate and literal application of I.C. §41-259, which is the statute that clearly provided the parameters of what the Idaho legislature intended the District to have for enforcement authority. If affirmed, the district court decision will uphold the legislative intent of that statute, and Idaho fire officials will continue to have the access and inspection authority that will help to protect life and property. The district court decision will have no impact upon the State except to reaffirm the fire safety access, inspection and remedy abilities that the Idaho legislature intended. The Company firmly believes that an opinion from this Court affirming the district court decision is called for by the literal application of Idaho Code §41-259 to the facts of this case.

Respectfully submitted this 16th day of August, 2017.



Steve Smith

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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