

LING, ROBINSON & WALKER  
ATTORNEYS AT LAW  
RUPERT, IDAHO 83350-0396

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RECEIVED  
AUG 14 2003  
Department of Water Resources

Attorneys for Claimant/Objector,  
A & B Irrigation District

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA ) Subcases 36-02080, 36-15127 (36-15127A  
) and 36-15127B), 36-15192, 36-15193  
Case No. 39576, ) (36-15193A and 36-15193B), 36-15194  
) (36-15194A and 36-15194B), 36-15195  
) (36-15195A and 36-15195B), 36-15196  
) (36-15196A and 36-15196B) (US/BOR)

A & B IRRIGATION  
DISTRICT,

Appellant.

NOTICE OF APPEAL

Fee Category: T  
Fee: \$95.00

TO: THE IDAHO ATTORNEY GENERAL'S OFFICE (NATURAL RESOURCES  
DIVISION), THE UNITED STATES DEPARTMENT OF JUSTICE  
(ENVIRONMENT AND NATURAL RESOURCES DIVISION), BUREAU OF  
RECLAMATION THROUGH THE UNITED STATES DEPARTMENT OF THE  
INTERIOR, RESPONDENTS THROUGH THEIR ATTORNEY OF RECORD  
JEFFREY C. FEREDAY, AND THE CLERK OF THE ABOVE-ENTITLED  
COURT.

NOTICE IS HEREBY GIVEN THAT:

1. That the above-named claimant/objector, A & B  
Irrigation District (hereinafter "District"), appeals to the Idaho  
Supreme Court from the *Order On Challenge* entered on April 25,  
2003, the *Order of Partial Decree* entered on May 7, 2003, and the  
*Memorandum Decision and Order Denying Motion for Reconsideration*

NOTICE OF APPEAL

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3 entered on July 25, 2003 in the above-entitled action, the  
4 Honorable Roger Burdick presiding.

5 2. The appellant has a right to appeal to the Idaho  
6 Supreme Court, and the *Order on Challenge*, the *Order of Partial*  
7 *Decree*, and the *Memorandum Decision and Order Denying Motion for*  
8 *Reconsideration* described in paragraph 1 above are appealable  
9 Orders under and pursuant to Idaho Appellate Rule 11(a)(3).

10 3. Case Number. The case number assigned to the action  
11 or proceeding by the Snake River Basin Adjudication are subcase  
12 numbers 36-02080, 36-15127 (36-15127A and 36-15127B), 36-15192, 36-  
13 15193 (36-15193A and 36-15193B), 36-15194 (36-15194A and 36-  
14 15194B), 36-15195 (36-15195A and 36-15195B), 36-15196 (36-15196A  
15 and 36-15196B) (US/BOR).

16 4. Parties. A & B Irrigation District is the claimant  
17 /objector appealing this matter and is represented by its attorneys  
18 of record, Roger D. Ling and Jason D. Walker of the firm Ling,  
19 Robinson & Walker. Adverse parties to this action are the  
20 respondents Tim Deeg, Mack Neibaur, Ralph E. Breeding, Aberdeen-  
21 American Falls Ground Water District, Bingham Ground Water  
22 District, and Magic Valley Ground Water District and are  
23 represented by attorneys Jeffrey C. Fereday and Karl T. Klein of  
24 the firm Givens Pursley, LLP.

25 5. Designation on Appeal. This appeal is taken from  
26 the *Order on Challenge* entered April 25, 2003, the *Order of*  
27 *Partial Decree* entered on May 7, 2003 and the *Memorandum Decision*

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3 and Order Denying Motion for Reconsideration entered on July 25,  
4 2003 in the above-entitled action, the Honorable Roger Burdick  
5 presiding, and certified for appeal pursuant to Rule 11(a)(3) of  
6 the Idaho Appellate Rules. In addition, the appellant is appealing  
7 the Order Granting Respondents' Motion for Partial Summary Judgment  
8 entered March 26, 2001, Special Master Terrence A. Dolan presiding,  
9 on the basis of the Special Master Report and Recommendation  
10 entered October 8, 2002.

11 6. The appellant intends to assert the following issues  
12 on appeal:

13 a. Whether the facts and the law as presented in these  
14 subcases support the District Court's conclusion that the source of  
15 the water for the "B" rights is only ground water.

16 b. Whether the District Court erred in failing to  
17 identify the source of the water for the "B" rights as waste water,  
18 drain water and diffuse surface water, in addition to ground water.

19 c. Whether the District Court erred in failing to  
20 recognize that the waste water, drain water and diffuse surface  
21 water captured by the District in its drain system is not subject  
22 to subordination.

23 d. Whether the District Court erred in concluding that  
24 the land upon which water is spread under the enlargement rights is  
25 all supplemented by water pumped directly under Water Right No.  
26 36-02080.

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3 e. Whether the District Court erred in failing to  
4 recognize the distinction between ground water directly pumped  
5 under Water Right No. 36-02080 and waste, seepage and return flows  
6 originating from the lands upon which the ground water has been  
7 delivered and recaptured in the District's drains.

8 f. Whether the District Court erred in concluding that  
9 "for purposes of a waste water analysis the water is still in  
10 control of the original appropriator while being used by the end  
11 water user."

12 g. Whether the District Court erred in concluding that  
13 use of waste or drain water in this case creates an injury to  
14 junior water rights *per se*.

15 h. Whether the District Court erred in failing to  
16 recognize the subordination date as the enactment date of the  
17 amnesty statute provided by Idaho Code §42-1416, which was relied  
18 upon by the appellant as the basis for its claims.

19 i. Whether the District Court erred with respect to  
20 Subcase Nos. 36-15193B and 36-15194B in failing to recognize the  
21 constitutional appropriation of this surface/waste water, where the  
22 drain water identified in these claims is put to beneficial use on  
23 additional acres in April of 1965 and April of 1968, respectively,  
24 which dates are prior to the mandatory permit date for surface  
25 water.

26 j. Whether the District Court erred in failing to  
27 recognize that, to the extent surface water, drain water or waste

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3 water is the source of the water used on the enlargement acres,  
4 there is no potential injury to junior water rights pursuant to  
5 Idaho Code §42-1426(2).

6 k. Whether the District Court erred in concluding that  
7 the doctrines of waiver and estoppel did not bar other ground water  
8 users from seeking to have the District's enlarged rights subordin-  
9 ated to the other ground water users' rights obtained after the  
10 enactment date of Idaho Code §42-1416 and before the enactment date  
11 of Idaho Code §42-1426.

12 l. Whether the District Court erred in ruling that the  
13 only certain way to fully mitigate potential injury to junior  
14 appropriators was to subordinate A & B Irrigation District's  
15 enlargement claims to all other water rights with priority dates  
16 earlier than April 12, 1994.

17 7. (a) A Reporter's Transcript requested.

18 (b) The appellant requests that the reporter's tran-  
19 scription from the proceedings before the Special Master which was  
20 filed with the District Court be lodged with the Supreme Court  
21 pursuant to I.A.R. 31(a)(2) and, further, that the reporter's  
22 transcript include the transcript of the oral argument before the  
23 District Court held March 18, 2003 at 1:30 p.m. in the Snake River  
24 Basin Adjudication Courthouse in Twin Falls, Idaho.

25 8. The appellant requests the following documents to be  
26 included in the Clerk's Record in addition to those automatically  
27 included under Rule 28, I.A.R.:

28 NOTICE OF APPEAL

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All pleadings and documents filed in all proceedings before the Special Master and in all proceedings before the District Court, including the following: (1) claimant's Motion for Summary Judgment; (2) objectors'/ground water users' Motion for Summary Judgment; (3) Affidavit of C. E. Brockway including the Preliminary Report of C. E. Brockway; (4) Affidavit of Dala Walton; (5) Affidavit of Dan Temple; (6) Bureau of Reclamation Supplement to the Preliminary Report of C. E. Brockway by Mark Croghyan, R. D. Schmidt, Joe Spinazola, and Dave Zimmer; (7) Director's Report and Recommendation in regard to these claims; (8) all Objections and Responses; (9) any motions to participate; (10) orders of the Special Master in District Court filed in this matter; and (11) a certificate listing all exhibits offered, whether or not admitted in the proceedings before the Special Master, as well as the reporter's transcript of all hearings before the Special Master filed with the District Court and to be lodged with the Supreme Court pursuant to I.A.R. 31(a)(2).

9. I certify:

(a) That a copy of this *Notice of Appeal* has been served on the Reporter;

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(b) That the Clerk of the District Court will be paid the estimated fee for preparation of the Reporter's Transcript as required by I.A.R. 24 upon receipt of estimate from the Reporter. The Reporter has been contacted and agreed to this arrangement.

(c) That the appellate filing fee has been paid.

(d) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED 12th day of August, 2003.

LING, ROBINSON & WALKER

By: Jason D. Walker  
Jason D. Walker, Attorneys for  
Claimant/Objector  
A & B Irrigation District

**CERTIFICATE OF MAILING**

I hereby certify that on the 12th day of August, 2003, I served true and correct copies of the *Notice of Appeal*, upon:

IDWR Document Depository  
P. O. Box 83720  
Boise, ID 83720-0098

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P. O. Box 44449  
Boise, Idaho 83711-4449

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U. S. Department of Justice  
Environment & Natural Resource Division  
550 West Fort Street, MSC 033  
Boise, Idaho 83724

Regional Director  
Pacific Northwest Region  
USDI Bureau of Reclamation  
1150 N. Curtis Rd.  
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Jeffrey C. Fereday, Esq.  
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P. O. Box 2720  
Boise, ID 83701

Attorneys for: Tim Deeg  
Mack Neibaur  
Ralph E. Breeding  
Aberdeen-American Falls Ground Water District  
Bingham Ground Water District  
Magic Valley Ground Water District

by depositing said copies in the United States mail, postage prepaid, in envelopes addressed to said parties at the foregoing addresses.

  
\_\_\_\_\_  
Jason D. Walker