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Department of Water Resources

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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 <u>36-15127B</u>), 36-15192, 36-15193
Case No. 39576,	)	(36-15193A and <u>36-15193B</u>), 36-15194
	)	(36-15194A and <u>36-15194B</u>), 36-15195
	)	(36-15195A and <u>36-15195B</u>), 36-15196
	)	(36-15196A and <u>36-15196B</u>) (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 1. 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 script 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

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

23 9. I certify:

24 (a) That a copy of this *Notice of Appeal* has been served
25 on the Reporter;
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28 NOTICE OF APPEAL

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

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

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

10 DATED 12th day of August, 2003.

11 LING, ROBINSON & WALKER

12
13 By: Jason D. Walker
14 Jason D. Walker, Attorneys for
15 Claimant/Objector
16 A & B Irrigation District
17
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19 CERTIFICATE OF MAILING

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

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

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

27 NOTICE OF APPEAL

1
2
3 U. S. Department of Justice
4 Environment & Natural Resource Division
5 550 West Fort Street, MSC 033
6 Boise, Idaho 83724

7 Regional Director
8 Pacific Northwest Region
9 USDI Bureau of Reclamation
10 1150 N. Curtis Rd.
11 Boise, ID 83706-1234

12 Jeffrey C. Fereday, Esq.
13 Karl T. Klein, Esq.
14 GIVENS PURSLEY, LLP
15 P. O. Box 2720
16 Boise, ID 83701

17 Attorneys for: Tim Deeg
18 Mack Neibaur
19 Ralph E. Breeding
20 Aberdeen-American Falls Ground Water District
21 Bingham Ground Water District
22 Magic Valley Ground Water District

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

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27
28 
Jason D. Walker