

RECEIVED

FEB 16 2007

DEPARTMENT OF
WATER RESOURCES

C. Tom Arkoosh, ISB #2253
Jay J. Kiiha, ISB # 6763
ARKOOSH LAW OFFICES, CHTD.
P.O. Box 32
Gooding, Idaho 83330
Telephone: (208) 934-8872
Facsimile: (208) 934-8873

*Attorneys for American Falls Reservoir
District #2*

John A. Rosholt, ISB #1037
John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
P.O. Box 485
Twin Falls, Idaho 83303-485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*Attorneys for Milner Irrigation District, North
Side Canal Company, and Twin Falls
Canal Company*

Roger D. Ling, ISB #1018
LING ROBINSON & WALKER
P.O. Box 396
Rupert, Idaho 83350
Telephone: (208) 436-4717
Facsimile: (208) 436-6804

*Attorneys for A & B Irrigation District and
Burley Irrigation District*

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548

Attorneys for Minidoka Irrigation District

IN THE COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

)
) Subcase Nos.: EXHIBIT A
) (City of Pocatello)
)
) **SURFACE WATER COALITION'S**
) **TRIAL BRIEF**
)
)

COMES NOW, American Falls Reservoir District #2, A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal

Company and Twin Falls Canal Company (collectively “Surface Water Coalition” or “Coalition”), by and through their undersigned attorneys of record, and submits this *Trial Brief* in the above-captioned subcases. For the reasons set forth below, this Court should deny the identified objections filed by Pocatello with prejudice.

INTRODUCTION

Pocatello’s objections as to the Director’s recommended “points of diversion” for water rights 29-271, 29-272, 29-273, and 29-4222 must be denied since these previously decreed surface water rights do not include Pocatello’s municipal wells as “alternate” points of diversion and there has been no accomplished transfer to a new point of diversion. Moreover, Pocatello has failed to even “claim” an accomplished transfer to add alternate points of diversion for water rights 29-271, 29-272, and 29-273. An objection does not serve as a substitute for an amended claim in the SRBA.

In addition, Pocatello’s objections as to the “purpose and place of use” for water rights 29-7118, 29-7119, 29-7431, and 29-7770 must also be denied since these previously licensed water rights identify a specific purpose of use (irrigation) along with a specific place of use (appurtenant acres). Pocatello cannot change its licensed irrigation groundwater and wastewater rights into “municipal” water rights to be used anywhere in Pocatello’s service area. Finally Pocatello cannot use an objection to the recommendation of its SRBA claims as an alternative to filing an application for transfer with the Idaho Department of Water Resources (“Department”) under I.C. section 42-222. Therefore, the Court should deny Pocatello’s point of diversion objections to water rights 29-271, 29-272, 29-273, and 29-4222, and its purpose and place of use objections to water rights 29-7118, 29-7119, 29-7431, and 29-7770.

STATEMENT OF FACTS

Surface Water Rights 29-271, 29-272, 29-273

Pocatello's Mink Creek water rights (29-271, 29-272, and 29-273) were originally decreed by the Bannock County District Court on June 5, 1926 in the *Sam B. Smith, Administrator, et. al. v. City of Pocatello, et al.* ("Smith Decree") proceedings. See SWC Ex. 1. These decreed surface water rights specified a point of diversion in the NE1/4 of the SE1/4 of Section 13, Township 8 South, Range 34 East, located as the confluence of the West and South Forks of Mink Creek. See *id.* Pocatello filed a *Notice of Claim* for each right on April 19, 1990. See SWC Exs. 2, 3, and 4. On all three claims, Pocatello's mayor claimed, under oath, that the "diverting works" consisted of a "diversion dam, headgate and pipeline to system."¹ Nowhere in any of the claims did Pocatello aver that its groundwater wells were "alternate" points of diversion for these surface water rights. See AO1, Rule 4d(1)(b).

The Director recommended Pocatello's Mink Creek water rights on July 10, 2003. The Director's recommendations listed the point of diversion as claimed by Pocatello. Pocatello has not filed any amended claims for its Mink Creek water rights. The points of diversion for water rights 29-271, 29-272, and 29-273 should be decreed as recommended by the Director.

Surface Water Right 29-4222

Pocatello first filed a statutory claim (I.C. § 42-243) with the Department for its Gibson Jack Creek water right (29-4222) on February 2, 1982. See SWC Ex. 5. Pocatello later filed a *Notice of Claim* with the SRBA Court on April 19, 1990. See SWC Ex. 6. In both of these claims Pocatello identified the point of diversion for this right to consist of a "Diversion Dam & Pipeline to Reservoir" located in the SE1/4 of the SW1/4 of Section 24, Township 7 South, Range 34 East, Bannock County. However, some thirteen years later after its original filing in

¹ The Notice of Claim for water right 42-272 also included "storage tanks" in the diverting works section.

the SRBA, Pocatello filed an *Amended Notice of Claim* listing “32 WELLS” as additional points of diversion for this right. *See* SWC Ex. 7.

The Director recommended Pocatello’s Gibson Jack Creek water right on July 10, 2003. The Director’s recommendation listed the point of diversion as originally claimed by Pocatello, and did not include any groundwater wells. The point of diversion for water right 29-4222 should be decreed as recommended by the Director. There is no evidence that water from Gibson Jack Creek has ever been diverted from the ground using a well or wells.

Ground Water Rights 29-7118, 29-7119

Pocatello’s irrigation groundwater rights 29-7118 and 29-7119 were licensed by the Department on January 9, 1975. *See* SWC Exs. 8 and 9. Both licenses contained a specified number of acres in particular quarter quarter sections. *See id.* Pocatello did not appeal or seek judicial review of the licenses that were issued by the Department.

On April 19, 1990, Pocatello filed *Notices of Claim* with the SRBA Court for these irrigation groundwater rights. *See* SWC Exs. 10 and 11. Pocatello claimed the water rights as they were licensed by the Department, for irrigation purposes for the acres identified in the licenses. *See id.* On April 25, 2003, Pocatello filed a single *Amended Notice of Claim* for the two irrigation groundwater rights, claiming a “municipal” purposes of use, “32 WELLS” for the points of diversion, and a place of use as the “service area” of the city. *See* SWC Ex. 12. Pocatello filed an amended claim for the previously licensed irrigation groundwater rights even though the water system is not connected to the rest of Pocatello’s municipal water system. *See Supplemental Director’s Report Regarding City of Pocatello’s Basin 29 State-Based Water Rights* at 7. The Director recommended water rights 29-7118 and 29-7119 as licensed (and originally claimed by Pocatello) on July 10, 2003. The purpose of use and place of use for water

rights 29-7118 and 29-7119 should be decreed as recommended by the Director. There is no evidence that Pocatello changed the nature of use or point of diversion under these rights prior to November 19, 1987 and Pocatello has not filed any transfers of these rights pursuant to section 42-222, Idaho Code.

Waste Water Right 29-7431

Pocatello's water right 29-7431 ("Wastewater Right") was originally licensed by the Department on June 11, 1987. *See* SWC Ex. 13. The Wastewater Right was licensed for "irrigation" purposes on 777 acres. *See id.* Pocatello filed a *Notice of Claim* with the SRBA Court for its Wastewater Right on April 19, 1990. *See* SWC Ex. 14. The right was claimed as it was licensed in 1987. *See id.* Pocatello then filed an *Amended Notice of Claim* on April 25, 2003. *See* SWC Ex. 15. This time, Pocatello claimed "REUSE of municipal diversions" as an additional source, "32 WELLS" as the points of diversion, "municipal" as the purpose of use, and the city's "service area" as the place of use. *See id.* Again, Pocatello made such a claim despite the fact the well is not connected to the rest of Pocatello's municipal water system. *See Supplemental Director's Report* at 7. The Director recommended the Wastewater Right as licensed (and originally claimed by Pocatello) on July 10, 2003. The purpose of use and place of use for water right #29-7431 should be decreed as recommended by the Director.

Ground Water Right 29-7770

Pocatello's water right 29-7770 was permitted by the Department on December 9, 1989. *See* SWC Ex. 16. Pocatello submitted proof of beneficial use for this irrigation water right on April 5, 1990. *See* SWC Ex. 17. Pocatello's sworn statement explains that the water right was used for "286 acres" for irrigation purposes. *See id.* Pocatello then filed a *Notice of Claim* in the SRBA on April 19, 1990. *See* SWC Ex. 18. A license for water right 29-7770 was issued on

January 2, 2003. *See* SWC Ex. 19. Thirteen years later Pocatello filed an *Amended Notice of Claim* on April 25, 2003, this time alleging “32 WELLS” for the points of diversion, “municipal” purpose of use, and the city’s “service area” for the place of use. *See* SWC Ex. 20. Pocatello’s amended claim did not reflect the water right as licensed by the Department on January 2, 2003. *See id.* The Director recommended the water right as licensed on July 10, 2003. The purpose of use and place of use for water right 29-7770 should be decreed as recommended by the Director.

ARGUMENT

Idaho law prohibits Pocatello from collaterally attacking and seeking to change the elements of its previously decreed and licensed water rights through the SRBA. In turn, Pocatello cannot use the SRBA as a way to evade the requirement to file an application for transfer with IDWR under Idaho Code § 42-222. As explained below, Pocatello cannot transform decreed surface water rights into groundwater rights (by way of an alternate point of diversion theory) and licensed irrigation groundwater and wastewater rights with specific places of use into municipal water rights to be used anywhere in Pocatello’s service area. The Court should deny Pocatello’s objections.

I. Pocatello Cannot Use the SRBA as a Forum to Collaterally Attack its Prior Water Right Decrees and Licenses.

The facts relating to Pocatello’s previously decreed surface water rights and previously licensed irrigation ground water rights are undisputed. Pocatello’s Mink Creek surface water rights were decreed for irrigation purposes by the *Smith Decree* in 1926. No wells were decreed as points of diversion for these water rights. In other words, the source for these water rights is a surface stream, not groundwater, as Pocatello’s point of diversion objections imply. Pocatello’s irrigation groundwater rights were licensed by IDWR in 1975 and 2003. Pocatello’s Wastewater irrigation right was licensed by IDWR in 1987. The wells for these irrigation

groundwater and wastewater rights are not connected to Pocatello's interconnected municipal well system, they are discrete and separate systems that are used for irrigation purposes on specific acres as permitted by the prior water right licenses. Pocatello did not judicially challenge any of its licenses that were issued by IDWR.

Pocatello, through objections to the Director's recommendations, now seeks to change the elements of its previously decreed and licensed water rights in the SRBA. Contrary to the "binding effect" of its prior decrees and licenses, Pocatello seeks to change its surface water rights by adding points of diversion (which in essence changes the source), and its groundwater and wastewater irrigation rights by changing the place of use and purpose of use. Pocatello cannot escape the binding effect of its prior decrees and licenses and change its water rights unless it files a transfer with IDWR. *See* I.C. § 42-220; *State v. Hagerman Water Right Owners*, 130 Idaho 736 (1997).

As recently reaffirmed by the SRBA Court's Presiding Judge, Idaho law prohibits Pocatello's "collateral attack" on its own water rights:

In this case, of the five surface water claims filed by the City of Pocatello, water right claims 29-00271, 29-00272, and 29-00273 have already been adjudicated with a state-law basis. . . . Although decrees issued in a prior adjudication are not conclusive as to the proof of existence of a water right, ***prior decrees are binding on the parties to the decree and their privies.*** *State v. Hagerman Water Right Owners*, 130 Idaho 736, 741-42, 947 P.2d 409, 414-15 (1997). . . . Accordingly, the City is bound by those prior decrees.

Licenses are and have been consistently treated in the SRBA the same as prior decrees for purposes of binding the parties and their privies. In *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*, subcases 36-02708 *et al.* (Dec. 29, 1999), the SRBA Court affirmed a special master's ruling that the SRBA was not the appropriate forum for collaterally attacking licenses previously issued through administration proceedings.

The SRBA cannot serve as a second opportunity for IDWR to recondition a licensed which it had a full opportunity to condition

when the license was originally issued. *See e.g., Matter of Hidden Springs Trout Ranch, Inc. v. Allred.* Having determined that I.C. § 42-220 binds the state to licensed rights, ***those same licenses are also binding on the license holder.*** If a party is aggrieved by any aspect of a license that party's remedy is to seek an administrative review and then, if necessary, judicial review of the license.

* * *

Like a prior decree, a licensed right is not conclusive as to the extent of the water right, since a license does not insulate a claimant from practices occurring after the license was issued such as abandonment or forfeiture. However, unlike a prior decree, the binding effect of a license extends beyond the parties to the administrative proceeding and their privies. The Idaho legislature also acknowledged the binding effect of prior licenses and decrees in enacting Idaho Code § 42-1427 which provides a mechanism for defining elements of water rights not described in prior decrees or licenses. Accordingly, ***the City is also bound by its prior license for water right claim 29-0431.***

The bottom line is that a party cannot have its water use adjudicated or administratively determined in one proceeding and then re-adjudicate the right under a more favorable legal theory in a subsequent proceeding.

Memorandum Decision and Order on Challenge and Order Disallowing Water Right Based on Federal Law at 12-13, subcase no. 29-11609 (October 6, 2006) (emphasis added).

Just as Pocatello cannot use the SRBA to transform its state decreed and licensed water rights into “federal reserved” water rights, the same goes for Pocatello’s efforts to: 1) try and convert its surface water rights into groundwater rights; and 2) try and convert its irrigation groundwater and wastewater rights into “municipal” water rights than can be diverted from any well in Pocatello’s system and used anywhere in its service area. If Pocatello seeks to change the elements of its water rights the proper forum is IDWR and the proper method is an application for transfer pursuant to Idaho Code § 42-222.

Accordingly, the following objections to Pocatello’s prior decreed and licensed water rights should be denied:

29-271, 29-272, 29-273, 29-4222

5. Point(s) of Diversion

Should be: Include all ground water points of diversion for the City of Pocatello's municipal water rights.

7. Purpose of Use

Should be: See "Reasons supporting objections" below.

9. Place of Use

Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, including all lands necessary to complete the beneficial use of the municipal water right."

29-7118, 29-7119, 29-7431, 29-7770

7. Purpose(s) of Use

Should be: municipal, see also "Reasons supporting objections" below.

9. Place of Use

Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, . . ."

Pocatello is bound by its prior representations to the Bannock County District Court in the *Smith Decree* proceedings and to IDWR in the licensing proceedings. Pocatello sought and received decreed and licensed irrigation rights with specific points of diversion and places of use. Idaho law prohibits Pocatello from expanding the scope of those irrigation water rights by collaterally attacking its prior decrees and licenses in the SRBA. Moreover, it would be unprecedented for this Court to allow a claimant to change its previously decreed surface water source (i.e. Mink Creek) to groundwater (through an alternate point of diversion objection) and previously licensed "irrigation" water rights to municipal uses (through a purpose and place of use objection), when no such change has occurred. Pocatello cannot demonstrate that it changed the point of diversion for its surface water rights or the purpose and place of use for its irrigation groundwater and wastewater rights. The Court should deny the above-referenced objections filed by Pocatello

II. Pocatello Has Not Provided Any Evidence to Support a Claim of “Alternate Points of Diversion” for its Surface Water Rights

Pocatello, through its objections, claims that various wells should be identified as “alternate points of diversion” for water rights 29-271, 29-272, 29-273, and 29-4222. In Pocatello’s *Response Brief* on summary judgment, it alleges that “all four water rights have priorities before 1969, and under the common law are therefore not required to file a transfer to any wells which began operating as APOD’s before 1969.” *Pocatello Response* at 10. Despite this statement, Pocatello has offered no evidence or legal authority to support this statement, including the significance of any “common law” or so-called “pre-1969 transfer rule”. Although Idaho’s adjudication statutes allow an accomplished transfer of a water right, under certain conditions that occur prior to 1987, Pocatello did not claim an accomplished change in the points of diversion for its surface water rights 29-271, 29-272, and 29-273. Instead, Pocatello filed objections to the Director’s recommendations in an effort to add the wells as points of diversion. As explained in Section III below, this method of amending a claim is prohibited in the SRBA as a matter of law.

Regardless, Pocatello has failed to provide any evidence that its surface water rights have been previously diverted through groundwater wells. Although Pocatello claims to have fully diverted its surface water rights through wells in the spring of 1985 and 1986, it is undisputed that Pocatello was diverting water under existing ground water rights during that period (152.4 cfs of ground water rights), which was more than ample to supply the four to five cfs of deferred surface water diversion. *See* SWC Ex. 21 *Brockway Report* at 5. The fact that Pocatello’s ground water rights may have been furnishing the entire city demand during the April-June 1985 and March-May 1986 period does not affirm that the ground water pumped was, in fact, Mink Creek or Gibson Jack Creek water. *See id.* Moreover, Pocatello has not proven that water

available to its surface water rights during that time was not diverted by another downstream surface water user on the Portneuf river system.

Finally, there is no hydrologic evidence to support Pocatello's claim that its wells should be considered alternate points of diversion for the surface water rights from Mink Creek and Gibson Jack Creek. *See* SWC Ex. 21, *Brockway Report* at 3. If, in fact, ground water is pumped in lieu of a surface water diversion six miles away from the ground water extraction with the same early priority as the surface right, there will be significant differences in the timing and magnitude of both the Portneuf River flow and ground water underflow from the basin. *See id.* at 3-4. Pocatello cannot demonstrate that there is an "immediate and direct connection between the surface sources and the well(s)", and certainly that there is "at least a 50 percent depletion in the original source from depletion at the proposed point of diversion in one day" as required by IDWR's Transfer Processing Memo No. 24 (exhibit to IDWR *Supplemental Director's Report*). *See id.* at 4.

III. Pocatello Cannot Change its Prior Decreed Mink Creek Water Rights Through Objections in the SRBA.

In addition to the binding effect of prior decrees and licenses, Pocatello is similarly bound by its claims to the SRBA Court. Pocatello's claims for water rights 29-271, 29-272, and 29-273 were all filed on April 19, 1990. *See* SWC Exs.2, 3, and 4. On all three claims, Pocatello's mayor claimed, under oath, that the "diverting works" consisted of a "diversion dam, headgate and pipeline to system." *See id.* Nowhere in any of the claims did Pocatello aver that its groundwater wells were "alternate" points of diversion for these surface water rights. Pocatello filed amended objections to all three claims in November 2003, alleging that the point of diversion included "all ground water points of diversion for the City of Pocatello's municipal water rights."

The SRBA Rules of Procedure (AO1) prohibit Pocatello's efforts to amend its claims by way of an objection. See Rule 4(d)(1)(b) ("A claimant **may not** amend a claim by filing an objection or a response") (emphasis in original). Since Pocatello did not claim the wells as a point of diversion when it filed claims for 29-271, 29-272, and 29-273 in 1990, and since Pocatello has failed to file any amended claims alleging a different point of diversion than what was originally claimed (i.e. "diversion dam, headgate, and pipeline to system"), the point of diversion objections should be denied. Pocatello has claimed that its four surface water rights "are treated as a group" and since it filed an amended claim for water right 29-4222 that somehow carries over as an amendment of its other surface water right claims. The argument is unavailing. Each water right was claimed separately and constitutes a separate subcase in the SRBA. The fact is undisputed that Pocatello did not amend its claims for water rights 29-271, 29-272, and 29-273. Pocatello cannot amend the elements of its claims through an objection.

Similarly, even if Pocatello is claiming "alternate points of diversion" under an accomplished transfer theory under I.C. § 42-1425, Pocatello has not complied with this statute either. Section 42-1425 plainly provides that "any change of place of use, point of diversion, nature or purpose of use or period of use of a water right . . . **may be claimed** in a general adjudication . . ." Pocatello has not claimed an accomplished transfer of the points of diversion of its surface water rights. Although the theory is impliedly advanced in the *Spronk Water Engineers, Inc. Expert Report* (at 16, "The surface water rights were fully diverted at the City's wells during April – June 1985 and during March – May 1986. By meeting its demand through the interconnected wells in lieu of diverting surface water, Pocatello diverted its surface water rights through its interconnected well system as alternate points of diversion prior to November 19, 1987."), that theory does not change the fact that Pocatello has **never formally claimed** such

a change in the points of diversion for its surface water rights in the adjudication. Since the original claims have not been amended, other parties in the SRBA have not received notice of what now appears to be an “accomplished transfer” claim. Pocatello cannot satisfy the statute through an objection and an expert report. The objections should be denied.

IV. The Director’s Recommendation on Pocatello’s 22 Interconnected Wells is Reasonable.

SWC Ex. 21; *From Brockway Report* at 4:

“The City claimed all of its wells as alternate points of diversion for all of its water rights which, if approved, would allow diversion of any of its water rights, senior or junior, from any well. If approved, priority administration would require determination of the instantaneous discharge from each well at all times to determine whether diversion rates were within priority. If the City was diverting in excess of the rate allowed under the cumulative priority of all rights, then either the Department or the City would have to decide which well or wells would be shut off or curtailed. This would be extremely difficult to regulate or administer. The Department’s decision to require a condition on each water right showing the date of first appropriation and the well number and location is justified. Any decision by the City to pump at significantly greater rates than historical practice from later priority wells could result in injury to local ground water users, especially those with earlier priority wells.

A change in spatial distribution of ground water pumping by the City within the authorized service area or place of use would likely not result in significant changes in short or long term underflow from the aquifer to the Eastern Snake Plain Aquifer. Thus there would likely not be negative impacts to the ESPA resulting just from the changes in diversion points.”

V. Pocatello’s Proposed Remark for the Place of Use on its Water Rights is Unnecessary and Should be Denied.

Pocatello offered the following remark in its place of use objections to all water rights:

“Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, *including all lands necessary to complete the beneficial use of the municipal water right.*”

See generally Pocatello Objections (emphasis added).

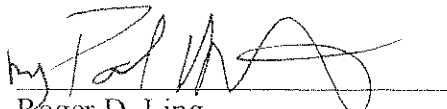
There is no basis in fact or law for the highlighted portion of the remark Pocatello seeks. The place of use and beneficial use of Pocatello's water rights are defined elements. The remark Pocatello seeks may be interpreted to modify the elements and unlawfully expand the scope of Pocatello's water rights. The remark was not included in the Director's recommendations and Pocatello has not provided any basis in fact or law for its inclusion. Therefore, the objections should be denied.

CONCLUSION

Pocatello's efforts to change its water rights through the SRBA are prohibited by Idaho law. For the foregoing reasons, this Court should deny Pocatello's point of diversion objections to its prior decreed water rights, claims 29-271, 29-272, 29-273, and 29-4222 and the purpose of use and place of use objections to its prior licensed irrigation groundwater and wastewater rights, claims 29-7118, 29-7119, 29-7431, and 29-7770.

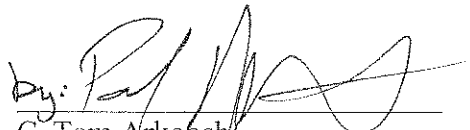
Dated this 14th day of February, 2007.

LING ROBINSON & WALKER


Roger D. Ling

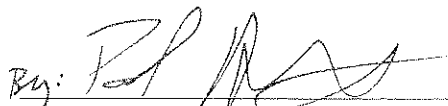
*Attorneys for A & B Irrigation District and
Burley Irrigation District*

ARKOOSH LAW OFFICES CHTD.


C. Tom Arkoosh
Jay J. Kiiha

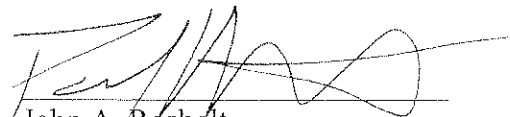
*Attorneys for American Falls Reservoir
District #2*

FLETCHER LAW OFFICES


W. Kent Fletcher

Attorneys for Minidoka Irrigation District

BARKER RSHOLT & SIMPSON LLP


John A. Rosholt
John K. Simpson
Travis L. Thompson
Paul L. Arrington

Attorneys for Milner, NSCC, and TFCC

EXHIBIT A

Subcase Nos.:

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
29-04222
29-04223
29-04224
29-04225
29-04226
29-07106
29-07118
29-07119
29-07222
29-07322
29-07375
29-07431
29-07450
29-07502
29-07770
29-07782
29-11339
29-11344
29-11348
29-13558
29-13559
29-13560
29-13561
29-13562
29-13636
29-13637
29-13638
29-13639

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February, 2007, I served a true and correct copy of the foregoing SURFACE WATER COALITION'S TRIAL BRIEF on the person(s) listed below, in the manner indicated:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Josephine P. Beeman
Beeman & Associates, P.C.
409 W. Jefferson Street
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for City of Pocatello

Sarah A. Klahn
WHITE & JANKOWSKI, LLP
511 16th Street, Suite 500
Denver, CO 80202

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for City of Pocatello

Natural Resources Division Chief
IDAHO ATTORNEY GENERAL'S OFFICE
P.O. Box 44449
Boise, ID 83711-4449

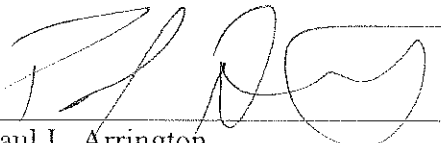
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for State of Idaho

Environment & Natural Resources Division
U.S. DEPARTMENT OF JUSTICE
550 W. Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for United States of America


Paul L. Arrington