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SEP 25 2008

DEPARTMENT OF
WATER RESOURCES

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Canal Company*

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*Attorney for Minidoka Irrigation
District*

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Facsimile: (208) 934-8873

*Attorneys for American Falls
Reservoir District #2*

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

Case No. 39576

)
) Subcase Nos. **Exhibit A**
)
) **JOINT MEMORANDUM IN**
) **OPPOSITION TO MOTION TO**
) **COMPEL**
)
)
)

A & B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District,
Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin
Falls Canal Company (Claimants) respond to the Motion to Compel filed by various ground
water districts represented by Racine, Olson, Nye, Budge & Bailey, Chartered (Ground Water

Districts) and joined by various irrigation entities represented by Holden, Kidwell, Hahn & Crapo, P.L.L.C. (Mud Lake Users) (collectively referred to as Objectors).

PROCEDURAL BACKGROUND

The issue before the Court in this combined proceeding is the “source” of water for the water rights described on Exhibit A. Claims were filed on all of these water rights describing the source as the Snake River. The recommendations of the Idaho Department of Water Resources (IDWR) indicate that the source of water for all of the water rights is the Snake River.

The Ground Water Districts filed objections to the source component of the water rights. An example of this objection is attached as Exhibit B. The Mud Lake Users also filed objections to the source of the water for these water rights and an example of the Mud Lake Users’ objections is attached as Exhibit C. Representing to the Court that it agreed to be “limited to the issues previously identified by the Claimants and Objectors to this matter”, the City of Pocatello was granted permission to participate in that Order entered March 26, 2008.

The Ground Water Districts and Mud Lake Users submitted substantially identical Interrogatories, Requests for Production and Request for Admission to Claimants during the month of June, 2008. All of the Claimants responded to the discovery submitted by the Objectors and copies of those responses are attached to the Affidavit of Candice M. McHugh filed in support of the Ground Water Districts’ Motion to Compel.

After receiving the answers and responses filed by the Claimants, the Objectors filed the pending Motion to Compel.

Subsequently, the Objectors and Pocatello filed Motions for Summary Judgment supported by voluminous records of IDWR and affidavits of current and past IDWR employees. The Motions filed by Objectors and Pocatello address not only the issue of source, but raise

issues pertaining to priority date, season of use, and whether some of the water rights should even exist, well outside the scope of the objections that have been filed.

ARGUMENT

When analyzing the Objectors' Motion to Compel, it is important to note that the only significant issue before the Court is the source of water for the Claimants' water rights.

Although the issue of source was resolved by the "connected sources" general provision decreed in the Basin – Wide 5 Order, which legally defines the relationship between all water rights, surface or ground, in the Basin and precludes an objection that seeks to allege a "separate source" determination, the Objectors have objected to the source of these water rights, and to that extent, discovery concerning the issue of source could be appropriate until the Court rules on Claimants' pending Motion for Summary Judgment.

However, Objectors and Pocatello did not object to priority date or season of use, nor did they allege in any objection that the water rights should not exist. Those issues are not properly before the Court nor are they a proper subject matter for discovery. See *Memorandum in Support of Claimants Joint Motion for Summary Judgment*.

IRCP 26(b)(1) sets forth the standard for scope of discovery:

Rule 26(b)(1). Scope of discovery in general.

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

As can be seen from the responses to discovery filed by the Claimants, all of the Claimants objected to the discovery requests at issue on the grounds that the discovery was overly broad, beyond the scope of permissible discovery and/or beyond the scope of the objection at issue. These objections were well taken.

For example, Request for Production No. 3 asks for production of “all documents and data referred to or relied upon in filing your claims to the water rights in the SRBA that are the subject of this action”. A response to this request would require copies of virtually all records of all entities and the Idaho Department of Water Resources (IDWR) pertaining to the water rights and water delivery. This type of request far exceeds the scope of the “source” objection that is before the Court.

Contrary to the Assertions of the Objectors, Claimants fully responded to the Discovery

Even though proper objections were filed to the discovery, all of the Claimants responded to the discovery by directing the Objectors to the records of IDWR and/or the Bureau of Reclamation, all of which are public records. In addition, all of the Objectors stated that the records of each entity were available for inspection at the offices of each entity.

Considering that the only issue before the Court pertains to source, Claimants were, and remain, somewhat uncertain as to what records Objectors desire to review in order to determine that the water rights of the Claimants are diverted from the Snake River. However, contrary to the implication contained in the Motion to Compel, Claimants did not refuse to allow Objectors to examine the records of each entity, but rather directed the Objectors to the records of each entity. For whatever reason, Objectors have refused to examine Claimants’ records. Even though Claimants had legitimate objections to the discovery submitted by Objectors, Claimants directed the Objectors to the public records that respond to the request and offered to allow Objectors to examine the records of Claimants.

Claimants have no duty to copy and submit records to Objectors

IRCP 34(a) sets forth the standard for production of documents:

Rule 34(a). Production of documents, electronically stored information, things, and entry upon land for inspection and other purposes - Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono- records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things including electronic and data storage devices in any medium which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served..... (Emphasis added)

As required by IRCP 34(a), Claimants offered to allow Objectors to inspect and copy the documents designated in Objectors' requests. The records of the IDWR and/or the Bureau of Reclamation are not in the "possession, custody, or control" of the Claimants, and Claimants therefore directed the Objectors to those records. Claimants fully complied with the requirements of IRCP 34(a).

CONCLUSION

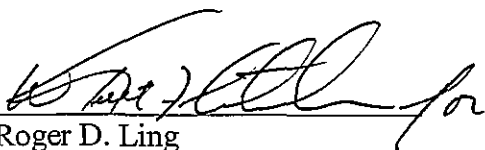
If the Court examines the discovery submitted by the Objectors, the Court will see that the discovery was overly broad and well outside the scope of the "source" issue before the Court. Further, if the Court examines the responses of the Claimants to the discovery, the Court will see that the Claimants fully responded to the discovery, directing the Objectors to public records not in Claimants' care, custody, and control that support the claims, and offered to allow the Objectors to examine the records of each of the Claimants. Rather than examining the records of the Claimants, Objectors filed their Motion to Compel.

It is apparent from the Motions for Summary Judgment filed by the Objectors that Objectors were on a fishing expedition seeking to find support for issues not raised by the

objections filed by the Objectors – issues including priority date, season of use and whether some of the water rights should exist. Those issues were not, and are not, properly within the scope of discovery.

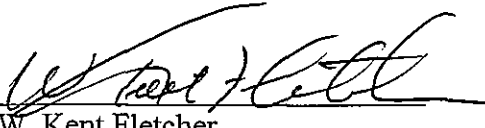
The Claimants having fully complied with the Idaho Rules of Civil Procedure and having fully responded to the discovery submitted by the Objectors, the Motion of the Objectors must be denied.

DATED this 24 day of September, 2008.


Roger D. Ling

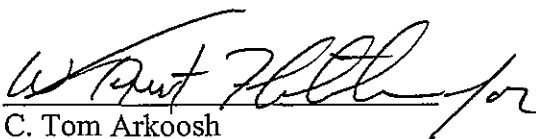
Attorney for A & B Irrigation District
and Burley Irrigation District

FLETCHER LAW OFFICE


W. Kent Fletcher

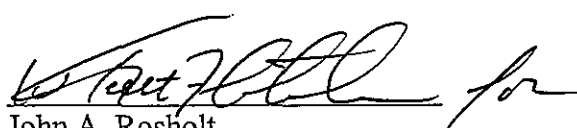
Attorney for Minidoka Irrigation District

CAPITOL LAW GROUP PLLC


C. Tom Arkoosh

Attorneys for American Falls
Reservoir District #2

BARKER ROSHOLT & SIMPSON LLP


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

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

CERTIFICATE OF SERVICE

I hereby certify that on this 24 day of September, 2008, I served a true and correct copy of the foregoing document on the following by the method indicated:

Clerk of the SRBA Court
253 Third Ave. North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

X U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

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

X U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort St., MSC 033
Boise, Idaho 83724

X U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

IDWR Repository
P.O. Box 83720
Boise, Idaho 83720-0098

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☐ Overnight Mail
☐ Facsimile
☐ Email

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25 N. 2nd E.
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Rexburg, Idaho 83440-0250

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☐ Facsimile
☒ Email

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Idaho Falls, Idaho 83405

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☐ Overnight Mail
☐ Facsimile
☒ Email

Randy C. Budge
Candice M. McHugh
Racine Olson
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Boise, Idaho 83702

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☐ Facsimile
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White & Jankowski, LLP
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Denver, CO 80202

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☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

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City of Pocatello
P.O. Box 4169
Pocatello, Idaho 83201

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☐ Facsimile
☒ Email

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137 W. 13th St.
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Burley, Idaho 83318

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James S. Lochhead
Brownstein, Hyatt & Farber, PC
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Denver, CO 80202

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☒ Email

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Hutchinson & Brown, LLP
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P.O. Box 207
Twin Falls, Idaho 83303-0207

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☒ Email

H. Evan Call
4373 Cold Water Rd.
American Falls, Idaho 83211

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☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Bret Anderson
Robyn Anderson
322 E. Main
Burley, Idaho 83318

X U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

David Gehlert
Natural Resources Section
Environmental and Natural Resources Division
U.S. Department of Justice
1961 Stout Street
Denver Colorado 80294

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

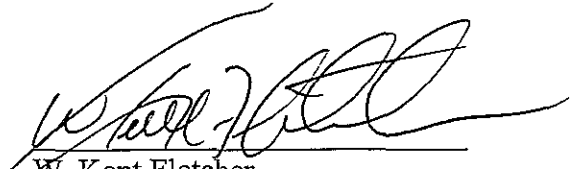

W. Kent Fletcher

EXHIBIT "A"

Subcases No.s:

01-00004
01-00005
01-00006
01-00007
01-00008
01-00009
01-00010
01-00013
01-00014
01-00016
01-00017
01-00210
01-00211A
01-00211B
01-00212
01-00213
01-00214A
01-00214B
01-00219
01-02050
01-02061
01-10034
01-10225
01-10237
01-10238
01-10239
01-10240
01-10241
01-10482
01-10526

In Re SRBA
Case No. 39576

STANDARD FORM 1 OBJECTION

EXHIBIT B

Address: 98 W. 50 S., Rupert, Idaho 83350

D. I object to the following elements as recommended in the Director's Report.
(Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be:
2. ☒ **Source**
Should be: **High surface water runoff from snowmelt or rain**
3. ☐ **Quantity**
Should be:
4. ☐ **Priority Date**
Should be:
5. ☐ **Point(s) of Diversion**
Should be:
6. ☐ **Instream Flow Description**
Should be:
7. ☐ **Purpose(s) of Use**
Should be:
8. ☐ **Period of Year**
Should be:
9. ☐ **Place of Use**
Should be:
11. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** The Director's recommendation fails to identify and distinguish the water supply associated with this water right. The claimed right is entitled to be filled only by high surface water runoff from snowmelt or rain. Its source of supply is not from base flow (ground water) to the Snake River. Conditions are required to prevent enlargement of the source of supply.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Bannock)

Randall C. Budge _____, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

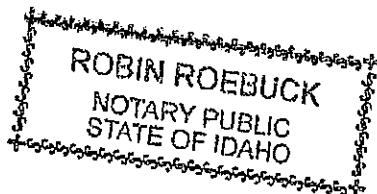
That I am the party/claimant filing this objection as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)
Randall C. Budge

(Attorney signing in representative capacity)

Subscribed and sworn to before me on this 3rd day of Oct., 2006.

Robin Roebuck
Notary Public for Idaho
Residing at: Pocatello
My Commission Expires: 8/18/2012



INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on Oct. 3, 2006, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

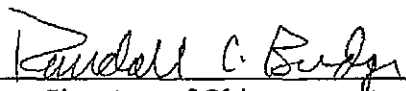
Name: Minidoka Irrigation District
Address: 98 W. 50 S.
Rupert, Idaho 83350

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

EXHIBIT "A"

Aberdeen-American Falls GWD
P.O. Box 70
American Falls, Idaho 83211

Bingham Ground Water District
c/o Craig Evans
1523 W. 300 N.
Blackfoot, Idaho 83221

Bonneville-Jefferson GWD
c/o Dane Watkins, President
P.O. Box 5781
Idaho Falls, Idaho 83405

Madison Ground Water District
c/o Jason Webster
P.O. Box 321
Rexburg, Idaho 83340

[REDACTED]

Southwest Irrigation District
c/o Bill Parsons
P.O. Box 688
Burley, Idaho 83318

Busch-Ag Resources
Attn: Tony Taylor, Legal Department, 202-6
One Busch Place
St. Louis, Missouri 63118-1852

United Water of Idaho
c/o Scott Rhead
P.O. Box 190420
Boise, Idaho 83719-0420

City of American Falls
c/o Pete Cortez/Water Superintendent
550 N. Oregon Trail
American Falls, Idaho 83211

City of Jerome
c/o Rob Williams
152 E. Avenue A.
Jerome, Idaho 83338

Jerome Cheese Company
c/o John Davis, General Manager
47 W. 100 S.
Jerome, Idaho 83338

City of Blackfoot
c/o Mayor Mike Birtue
157 North Broadway
Blackfoot, Idaho 83221

City of Chubbuck
c/o Mayor Steven England
P.O. Box 5604
Chubbuck, Idaho 83202

[REDACTED]

[REDACTED]

[REDACTED]

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OCT 05 2008

CLERK OF DISTRICT COURT
TWIN FALLS, IDAHO

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

A. Subcase 1-8

Case No. 35976

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Jefferson Irrigation District
724 E. 1800 N.
Montevieu, ID 83435

Daytime Phone: 208-663-4472

Name & Address of Attorney:

Robert L. Harris
Holden, Kidwell, Hahn & Crapo, PLLC
PO Box 50130
Idaho Falls, ID 83405-0130

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Minidoka Irrigation District
Address: 98 W. 50 S.
Rupert, ID 83350

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**

Should be: _____

2. ☒ **Source**

Should be: The Director's Recommendation fails to identify and distinguish the water supply associated with this water right. The claimed right is entitled to be filled only by high surface water runoff from snow melt or rain. Its source of supply is not from base flow (groundwater) to the Snake River. Conditions are required to prevent enlargement of the source of supply.

3. ☐ **Quantity**

Should be: _____

4. ☐ **Priority Date**

Should be: _____

5. ☐ **Points of Diversion**

Should be: _____

6. ☐ **Instream Flow Description**

Should be: _____

7. ☐ **Purpose(s) of Use**

Should be: _____

8. ☐ **Period of Year**

Should be: _____

9. ☐ **Place of Use**

Should be: _____

10. **I object because:**

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** See response to No. 2 above.

VERIFICATION (Must be Completed)

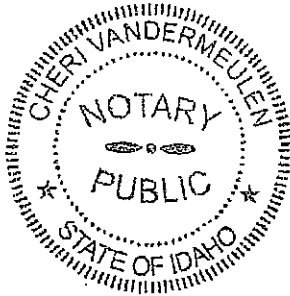
STATE OF IDAHO)
)ss.
County of Bonneville)

Robert L. Harris, duly sworn, upon oath, deposes and says:

That I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Robert L. Harris
Robert L. Harris

Subscribed and sworn to before me this 3rd day of October, 2006.



Cheri Vandermeulen
Notary Public for Idaho
Residing at: Idaho Falls
My Commission Expires: July 7, 2009

CERTIFICATE OF MAILING

I hereby certify that on the 4 day of October, 2006, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Minidoka Irrigation Dist.
c/o Fletcher Law Office
PO Box 248
Burley, ID 83318

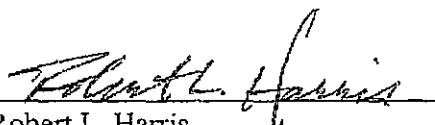
3. Copies to:

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, ID 83711-4449

United States Department of Justice
Environmental and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

HOLDEN, KIDWELL, HAHN & CRAPO, PLLC


Robert L. Harris