

RECEIVED
JUN 25 2009
DEPARTMENT OF
WATER RESOURCES

Randall C. Budge, ISB No. 1949
Candice M. McHugh, ISB No. 5908
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
101 South Capitol Boulevard, Suite 208
Boise, ID 83702
Telephone: 208-395-0011
Fax: 208-433-0167
rcb@racinelaw.net
cmm@racinelaw.net

Attorneys for Ground Water Districts

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 Numbers: See Attachment
A**

**GROUND WATER DISTRICTS'
AMENDED MOTION¹ FOR
SUMMARY JUDGMENT**

COME NOW, Aberdeen American Falls Ground Water District, Bingham Ground Water District, Bonneville Jefferson Ground Water District, Jefferson Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District, (collectively referred to herein as "Ground Water Districts"), (collectively referred to herein as "Ground Water Districts") by and through counsel of record and pursuant to

¹ This Amended Motion for Summary Judgment differs only slightly from the August 22, 2008 Motion for Summary Judgment. First, on June 10, 2009 the Ground Water Districts withdrew their objections to North Side Canal Company's water right recommendations and the court dismissed the objections on June 22, 2009. Therefore, the Ground Water Districts are no longer seeking summary judgment as to North Side Canal Company's water rights. In addition, after further discovery in this case, the Ground Water Districts decided that water right no.1-10034 should not be disallowed entirely and therefore are not seeking to have it disallowed, but rather are seeking to have it treated as a high flow claim under paragraph number 2 of this motion.

Rule 56 of the Idaho Rules of Civil Procedure and moves for Summary Judgment on the following issues:

1. Claim No. 1-10482 claimed by the United States Bureau of Reclamation, Claim Nos. 1-10225, 1-10237, 1-10238, 1-10239, 1-10240, 1-10241 claimed by A & B Irrigation District and Claim No. 1-10483 claimed by The Amalgamated Sugar Co. should be disallowed because no water has ever been delivered under these water rights.
2. All remaining water rights listed on Attachment A are high water rights and only have water delivered during high runoff and snow melt during spring and early summer. They do not receive water for beneficial use during the entire irrigation season. Therefore, a condition limiting the season of use, and clarifying these water rights is necessary.
3. The primary source of supply for all of these high water rights (or flood rights) listed on Attachment A consist primarily of snow melt and spring runoff. Therefore, a condition clarifying the source of supply and that these water rights are not entitled to make a delivery call against junior priority ground water rights is necessary.

The grounds supporting this Amended Motion for Summary Judgment are based upon the following documents which are already on file herein, the supporting affidavits of Candice M. McHugh dated August 22, 2008, Anthony Olenichak dated August 21, 2008 and Ronald D. Carlson dated August 22, 2008 together with the Memorandum in Support of Summary Judgment dated August 22, 2008.

For the court's reference, an index listing out the documents and exhibits that are filed in support of this motion is attached hereto and labeled *Index of Documents and Exhibits Filed In Support of Ground Water Districts' Amended Motion for Summary Judgment in Subcase Nos. 1-4, 1-6, 1-7, 1-8, 1-9, 1-10, 1-13, 1-14, 1-17, 1-211A, 1-211B, 1-214A, 1-214B, 1-219, 1-2050, 1-2061, 1-10034, 1-10225, 1-10237, 1-10238, 1-10240, 1-10241, 1-10482, 1-10483.*

A hearing date is currently scheduled for August 27, 2009 for argument on summary judgment.

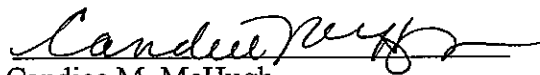
DATED this 23rd day of June, 2009.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED


CANDICE M. McHUGH

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2009 the above and foregoing document(s), was served by email to those with email addresses and by placing a copy in the U.S. Mail, postage prepaid and addressed to the following:


Candice M. McHugh

Clerk of the SRBA Court 253 Third Avenue North <i>VIA Fed Ex overnight</i> PO Box 2707 Twin Falls, ID 83302-2707	Original IDWR Repository PO Box 83720 Boise, ID 83720-0098
Natural Resources Division Chief State of Idaho Attorney General's Office PO Box 44449 Boise, ID 83711-4449	John K. Simpson, Esq. Travis L. Thompson, Esq. Barker, Rosholt & Simpson 113 Main Avenue West, Suite 303 Twin Falls, ID 83301-6167 Fax: (208) 735-2444 jar@idahowaters.com tlr@idahowaters.com
United States Department of Justice Environment & Natural Resources Div 550 West Fort Street MSC 033 Boise, ID 83724 david.gehlert@usdoj.gov	W. Kent Fletcher, Esq. Fletcher Law Office P.O. Box 248 Burley, ID 83318-0248 Fax: (208) 878-2548 wkf@pmt.org
Josephine P. Beeman, Esq. Beeman & Associates PC 409 W. Jefferson Boise, ID 83702-6049 Fax: (208) 331-0954 Jo.beeman@beemanlaw.com	Sarah A. Klahn, Esq. White & Jankowski, LLP 511 16 th Street, Suite 500 Denver, CO 80202 Fax: sarahk@white-jankowski.com
Roger D. Ling, Esq. Ling, Robinson & Walker 615 H Street P.O. Box 396 Rupert, ID 83350-0396 Fax: (208) 436-6804 rdl@idlawnfirm.com	A. Dean Tranmer City of Pocatello PO Box 4169 Pocatello, ID 83201

Jerry R. Rigby 25 N 2nd E PO Box 250 Rexburg, ID 83440-0250 jrigby@rex-law.com	Robert L. Harris 1000 Riverwalk Dr, Ste 200 PO Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com
C. Tom Arkoosh, Esq. Arkoosh Law Offices, Chtd. 301 Main Street P.O. Box 32 Gooding, ID 83330 Fax: (208) 934-8873 tarkoosh@capitolawgroup.net	Tim Eilers, Pro Se 1109 W 300 S Heyburn, ID 83336
Steve Muecke, Pro Se 925 W Wanda Ln Heyburn, ID 83336	

ATTACHMENT A
SUBCASE LIST

1-4
1-6
1-7
1-8
1-9
1-10
1-13
1-14
1-17
1-211A
1-211B
1-214A
1-214B
1-219
1-2050
1-2061
1-10034
1-10225
1-10237
1-10238
1-10239
1-10240
1-10241
1-10482
1-10483

INDEX OF DOCUMENTS AND EXHIBITS FILED IN SUPPORT OF GROUND WATER DISTRICTS' SUMMARY JUDGMENT MOTION IN SUBCASE NOS. 1-4, 1-6, 1-7, 1-8, 1-9, 1-10, 1-13, 1-14, 1-17, 1-211A, 1-211B, 1-214A, 1-214B, 1-219, 1-2050, 1-2061, 1-10034, 1-10225, 1-10237, 1-10238, 1-10240, 1-10241, 1-10482, 1-10483

Document Name	Exhibits attached to Document if Any	
Affidavit of Candice M. McHugh in Support of Motion for Summary Judgment Dated August 22, 2008.	<i>Exhibit</i>	<i>Document Name</i>
	A	License No. 01-2061
	B	License No. 01-2050
	C	Responses to Request for Admission
	D	Stipulation in <i>Burley Irr. Dist. v. Eagle</i> (5 th Jud. Dist. 1968) "Eagle Decree".
	E	Eagle Decree Findings of Fact and Conclusions of Law
	F	Eagle Decree Supplemental Decree
	G	Decree entered in <i>Woodville Canal Co. v. Clark & Edwards Canal & Irr. Co.</i> , (U.S. Dist. Idaho, June 25, 1929)
	H	Decree entered in <i>Milner Low Lift Irr. Dist. v. Crandall</i> (U.S. Dist. Idaho, April 30, 1931)
	I	Foster Decree
Affidavit of Ronald D. Carlson in Support of Motion for Summary Judgment Dated August 22, 2008	A	Table of Water Rights
Affidavit of Tony Olenichak dated August 21, 2008	None	