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DEPARTMENT OF
WATER RESOURCES

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: 01-00007, 01-
00008, 01-00009, 01-00014

**GROUND WATER DISTRICTS'
MOTION FOR SUMMARY
JUDGMENT ON PRIORITY
DATES**

COME NOW, the Aberdeen American Falls Ground Water District, Bingham Ground Water District, Bonneville Jefferson Ground Water District, Carey Valley Ground Water District, Jefferson Clark Groundwater District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District, (collectively referred to herein as "Ground Water Districts") and hereby move the Special Master for a clarifying remark regarding the priority dates claimed in the referenced sub-cases.

1. The water rights referenced above¹ have a recommended priority date of April 1, 1939.
2. By the terms of the Stipulation, Findings of Fact and Conclusions of Law and Supplemental Decree entered in the case *Burley Irr. Dist. v. Eagle* (5th Jud. Dist. July 10, 1968) (referred to collectively as the “Eagle Decree”), these priority dates were negotiated, and the date of actual first diversion to beneficial was not April 1, 1939. Eagle Decree, Ex. C1, D1 and J1² to Affidavit of Candice McHugh in Support of Motion for Summary Judgment on Priority Dates (“McHugh Aff.”) In some cases, such as the case of A&B Irrigation District, the project works were not even constructed in 1939. Ex. A1 to McHugh Aff.
3. The Ground Water Districts were not party to the Eagle Decree and therefore are not bound by any agreements among the parties.
4. Under Idaho law, and the law of the case in the SRBA, a negotiated priority date in a prior decree is not dispositive of beneficial use on the claimed date absent specific findings of fact supporting the date.
5. The Ground Water Districts are unaware of any evidence of diversion for beneficial use of these rights on or prior to April 1, 1939. Instead, the actual first date of diversion for beneficial use under these water rights was years later as testified to and entered into the record by the claimants in the Surface Water Coalition Delivery Call case, *In the Matter of Distribution of Water to Various Water Rights Held by or for the Benefits of A&B Irrigation District, American Falls Reservoir District, North Side Canal Company and Twin Falls Canal Company*. See Ex. B1 to McHugh Aff.
6. Under I.C. §§ 42-1401B and 42-1411(2)(j), a clarifying remark should be added to the partial decrees in these subcases identifying the priority date being the date of actual first diversion for beneficial use which is necessary for the lawful administration of these water rights as against junior water users who were not parties to the Eagle Decree.

This Motion is further supported by the Memorandum in Support of Motion for Summary Judgment on Priority Dates and the Affidavit of Candice McHugh in Support of Motion for Summary Judgment on Priority Dates filed contemporaneously herewith.

¹ These water rights are also subject to the Ground Water Districts’ Motion for Summary Judgment dated August 22, 2008 (“August 22, 2008 Motion”). This motion and the August 22, 2008 motion can be read harmoniously; the water rights referenced in this Summary Judgment Motion on Priority Date have another necessary remark that should be added in addition to the requests set forth in the August 22, 2008 motion.

² The exhibits for this Motion for Summary Judgment on Priority dates are labeled with the suffix number “1” after each exhibit in order to distinguish these exhibits from the exhibits attached to the August 22, 2008 motion.

Also attached hereto for the Court's reference is *Index of Documents and Exhibits Filed in Support of Ground Water Districts' Summary Judgment Motion on Priority Dates for Subcase Nos. 1-7, 1-8, 1-9, and 1-14.*

Respectfully submitted this 23rd day of June, 2009.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

By: 
Candice M. McHugh
ATTORNEY FOR
GROUND WATER DISTRICTS

CERTIFICATE OF MAILING

I hereby certify that on this 24th day of June, 2009, a true and correct copy of the foregoing was served by email to those with email addresses and U.S. Mail, postage pre-paid and addressed to the following:


Candice M. McHugh

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INDEX OF DOCUMENTS AND EXHIBITS FILED IN SUPPORT OF GROUND WATER DISTRICTS' SUMMARY JUDGMENT MOTION ON PRIORITY DATE FOR SUBCASE NOS. 1-7, 1-8, 1-9, and 1-14

Document Name	Exhibits	
Affidavit of Candice M. McHugh in Support of Motion for Summary Judgment on Priority Date dated June 23, 2009.	<i>Exhibit No.</i>	<i>Exhibit Title</i>
	A1	Excerpts from the A & B Irrigation District Water Management Plan dated January 2002
	B1	Excerpts of Appendix AT from the Surface Water Coalition's September, 2007 expert report
	C1	Stipulation entered in <i>Burley Irrigation District et al. v. Eagle</i> , (5 th Jud. Dist. July 10, 1968) "Eagle Decree".
	D1	<i>Findings of Fact and Conclusions of Law</i> from the Eagle Decree.
	E1	Director's Report for water right number 1-7
	F1	Director's Report for water right number 1-8
	G1	Director's Report for water right number 1-9
	H1	Director's Report for water right number 1-14
	J1	<i>Supplemental Decree</i> from Eagle Decree