

Roger D. Ling, ISB #1018
P.O. Box 623
Rupert, Idaho 83350
Telephone: (208) 434-2717
Facsimile: (208) 436-6804

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

John A. Rosholt, ISB #1037
John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Milner Irrigation District,
North Side Canal Company and Twin Falls
Canal Company*

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*

C. Thomas Arkoosh, ISB #2253
CAPITOL LAW GROUP PLLC
P.O. Box 32
Gooding, Idaho 83330
Telephone: (208) 934-8872
Facsimile: (208) 934-8873

*Attorneys for American Falls
Reservoir District #2*

RECEIVED
JUN 26 2009
DEPARTMENT OF
WATER RESOURCES

**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. **Attachment 1**
)
) **CLAIMANTS'**
) **MEMORANDUM IN SUPPORT**
) **OF SECOND JOINT MOTION**
) **FOR SUMMARY JUDGMENT**
)

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Falls Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company, Claimants in the above-referenced subcases (collectively referred to as "SWC"), by and through counsel of record, and

SWC MEMORANDUM IN SUPPORT OF SECOND JOINT SUMMARY JUDGMENT
MOTION

pursuant to I.R.C.P. 56(c), hereby submit this *Memorandum in Support of Claimants' Second Joint Motion for Summary Judgment*. As set forth below, the various objections filed by GWD, Pocatello, FMID and the Mud Lake Users fail as a matter of law and should be dismissed.

I. INTRODUCTION AND FACTS

This motion seeks a ruling from this Court that the Objectors cannot now challenge the decreed elements (priority date, quantity, etc.) of the *Eagle Decree* because they either: (1) Were a party to the *Stipulation and Eagle Decree*; (2) Had notice of the pendency of the *Eagle Decree* adjudication but failed to object or intervene in any way; or, (3) Have taken their water rights subsequent to the issuance of the *Eagle Decree* and therefore any water rights they have acquired are subject to the rights set forth in that decree.

Next, this motion seeks a ruling that the “season of use” of 3/15 to 11/15 was properly recommended pursuant to the Idaho Supreme Court’s decision in *A&B Irrigation District v. Idaho Conservation League*, 131 Idaho 411 (1998) and IDWR’s standard procedure and that element should be decreed as a matter of law. In addition, this motion seeks a ruling that the priority dates for certain claims to which that element was not objected to should be decreed as recommended and that the priority date for Milner Irrigation District’s water right 1-2050 should be recommended for decree as October 25, 1939 consistent with the prior license issued by IDWR.

Finally, the Court should enter summary judgment that the requested remarks and conditions pertaining to the source of the water and the requested prohibition that a senior water right holder cannot make a call on a junior user are contrary to law and are not supported by the facts.

The relevant facts are not in dispute. The *Eagle Decree* was issued by Judge Theron Ward of the Twin Falls County District Court on July 10, 1968, pursuant to a summary supplemental adjudication under I.C. § 42-1405¹. See Ex. A to *Affidavit of Travis L. Thompson* (filed August 22, 2008 in support of the SWC's *Joint Motion for Summary Judgment*). Although the lawsuit that led to the *Eagle Decree* ultimately resulted in a stipulation, the parties were required to present evidence and the Court entered findings of fact and conclusions of law accordingly. Furthermore, prior to the issuance of the decree, notice of the pendency and purpose of the action was published for 3 weeks in newspapers of general circulation in the Idaho counties of Power, Cassia, Minidoka, Twin Falls, Jerome, Blaine, Gooding, Lincoln and Elmore, and all provisions of the statute relating to notice and publication of notice were complied with. See Ex. A to *Second Affidavit of Travis L. Thompson* (hereinafter "*Second Thompson Aff.*").

A companion case with the same parties to the Twin Falls County District Court case was filed in Fremont County to cover Snake River water users above Blackfoot. See *Aberdeen-Springfield Canal Company et al. v. Henry Eagle* (Seventh Jud. Dist., Fremont County District Court, Case no. 6117). Notice of the pendency of that action was apparently published in various counties in eastern Idaho as well to comply with the requirements of I.C. § 42-1405.²

The notices filed for purposes of the Twin Falls County case advised all affected persons in those counties of the proposed water rights to be decreed and "[t]hat this cause will be brought on for hearing in open court at 2:00 o'clock P.M., on the 20th day of March, 1967, at which time any party interested may appear and defend against said rights as above set out." See Ex. A to *Second Thompson Aff.* (emphasis added).

¹ Now codified at I.C. § 42-1424.

² The SWC will supplement this information regarding the publication of notice in other counties once it is obtained from the Fremont County District Court or elsewhere.

Furthermore, the City of Pocatello, Blackfoot Irrigation Company, United Canal Company (formerly Danskin Ditch Company and Trego Ditch Company) and Fremont-Madison Irrigation District, were all parties to the stipulation and Decree in the *Eagle Decree* proceedings. As such those objectors are barred as a matter of law from re-litigating issues that have already been determined in the *Eagle Decree*.

With respect to Milner Irrigation District's water right 1-2050, IDWR issued a license on July 15, 1950 for a water right to the Snake River for 37 cfs with a priority date of October 25, 1939. *See* Ex. G to *Thompson Aff.* (filed August 22, 2008). In the SRBA IDWR erroneously recommended a priority date of July 11, 1968, contrary to the express terms of the license. Milner filed a timely objection to the "priority date" element relying upon the prior license. *See Milner Objection* to water right 1-2050.

II. ISSUES

- A. WHETHER A PARTY TO THE STIPULATION THAT LED TO THE *EAGLE DECREE* AND TO THE *EAGLE DECREE* ITSELF, IS NOW BOUND BY THE DECREE AND THEREFORE ESTOPPED FROM CHALLENGING THE ELEMENTS OF THE PRESENT RECOMMENDATIONS THAT WERE DECIDED BY THE *EAGLE DECREE*.**
- B. WHETHER *RES JUDICATA* PREVENTS A CHALLENGE TO THE ELEMENTS OF THE ELEMENTS OF THE WATER RIGHTS ADJUDICATED IN THE *EAGLE DECREE*.**
- C. WHETHER WATER RIGHT HOLDERS WHO ACQUIRED THEIR RIGHTS SUBSEQUENT TO THE ISSUANCE OF THE *EAGLE DECREE* ARE PREVENTED FROM CHALLENGING ITS DECREED ELEMENTS.**
- D. WHETHER THE SWC IS ENTITLED TO SUMMARY JUDGMENT ON THE PRIORITY DATE ELEMENT FOR UNOBJECTED TO WATER RIGHTS.**
- E. WHETHER THE REMARKS AND CONDITION REQUESTED BY GWD ARE NECESSARY TO DEFINE WATER RIGHTS PREVIOUSLY DECREED AND ADMINISTERED BY WATER DISTRICT 01 AND IDWR.**

III. SUMMARY JUDGMENT STANDARDS

Summary judgment is appropriate if the “pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c); *Read v. Harvey*, 141 Idaho 497 (2005). Where the action is to be tried before the court, the judge need not draw inferences in favor of the nonmoving party, but is then free to arrive at the most probable inferences based on the uncontroverted evidence. *Id.* If there are no material facts in dispute, the court may enter judgment in favor of the party who is entitled to prevail as a matter of law. *Barlow’s Inc. v. Bannock Cleaning Corp.*, 103 Idaho 310 (Ct. App. 1982).

IV. ARGUMENT

A. THE CITY OF POCA TELLO AND THE FREMONT-MADISON OBJECTORS WERE PARTIES TO THE *EAGLE DECREE* AND CANNOT COLLATERALLY ATTACK ITS TERMS IN THE SRBA.

The undisputed facts establish that the City of Pocatello, Blackfoot Irrigation Company, United Canal Company and Fremont-Madison Irrigation District (each of whom is an objector in this case) were parties to the stipulation and decree in the *Eagle Decree* proceedings.³ See Exs. A, R to *Thompson Aff.* (filed August 22, 2008). Simply put, a party to a decree is bound thereby. See *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 741-42 (1997); Judge Melanson’s *Memorandum Decision and Order on Challenge and Order Disallowing Water Right Based on Federal Law* at 12 (subcase no. 29-11609) (Oct. 6, 2006). As parties to the *Eagle Decree*, the above-referenced objectors are barred from collaterally attacking the elements of the SWC water rights that were previously determined in that adjudication, including quantity, priority date, and place of use.

³ In the case of United Canal Company its predecessors were signatories and parties to the *Eagle Decree*.

Stated another way, the City of Pocatello, Blackfoot Irrigation Company, United Canal Company and Fremont-Madison Irrigation District all specifically agreed to the terms of the SWC water rights set forth in the *Eagle Decree*. They cannot object to the SWC water rights now and seek to “re-adjudicate the right under a more favorable legal theory in a subsequent proceeding”. See *Memorandum Decision* at 13 (subcase no. 29-11609).

In summary, Idaho law requires those parties to remain bound by the terms of the *Eagle Decree*. Were the Court to ignore the provisions of that decree it is clear that the decrees in the SRBA would be similarly subject to future collateral attack. Fortunately this type of action is prohibited by Idaho law thus providing certainty to water right holders moving forward.

B. THE *EAGLE DECREE* IS *RES JUDICATA* AND, UNDER THE CIRCUMSTANCES PRESENTED, NOT SUBJECT TO RELITIGATION.

The doctrine of *Res Judicata* serves three fundamental purposes: (1) It preserves the acceptability of judicial dispute resolution against the corrosive disrespect that would follow if the same matter were twice litigated to inconsistent results; (2) It serves the public interest in protecting the courts against the burdens of repetitious litigation; and (3) It advances the private interest in repose from the harassment of repetitive claims. *Ticor Title Co. v. Stanion, II*, 144 Idaho 119, 123 (2007).

Furthermore, it is well established that a water right is a real property right in Idaho. See I.C. § 55-101; *Bennett v. Twin Falls North Side Land & Water Co.*, 27 Idaho 643 (1915). *Res Judicata* applies with special force in actions relating to property rights because such judgments fall within the clear need for repose. *Aldape v. Akins*, 105 Idaho 254 (1983). That need for repose is clearly present in this case, as the objectors are attempting to challenge water rights they expressly stipulated to and were settled over 40 years ago. Moreover, those same water

rights have been administered by Water District 01, along with the objectors' surface water rights, since that time.

Res Judicata includes both claim preclusion and issue preclusion. *Ticor Title Co.* 144 Idaho at 123. The key difference between claim preclusion or “true *Res Judicata*” and issue preclusion is that issue preclusion may be asserted defensively by a person who was not a party to the original action. *Brown v. Indus. Special Indem. Fund*, 138 Idaho 493, 496 (2003). Thus, although claim preclusion and issue preclusion involve separate tests, the tests have significant overlap. Accordingly, to avoid duplicative analysis, the standards for claim preclusion and issue preclusion will be analyzed together.

Claim preclusion bars a subsequent action in its entirety when three requirements are met: (1) same parties or their privies; (2) same claim; and (3) final judgment. *Ticor Title Co.*, 144 Idaho at 124.

Issue preclusion prevents re-litigation of an identical issue in a subsequent action. The test is governed by the presence of five factors: (1) the issue decided in the previous action is identical to the issue in the present action; (2) the issue sought to be precluded was actually decided in the prior action; (3) there was a final judgment on the merits in the prior litigation; (4) the party against whom the issue was asserted was a party or in privity with a party to the litigation; and, (5) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue in the earlier case.

1. Same claim and/or issues:

Under either a claim preclusion analysis or an issue preclusion analysis, the objectors have not raised any new claim or issues. Instead, they are merely seeking to re-litigate issues that were decided in the *Eagle Decree* in 1968, and whose outcome has been relied upon ever

since. The issue of “source” has been decided. The *Eagle Decree* clearly enumerates the source of water as the Snake River. See *SWC Joint Motion for Summary Judgment* and supporting documents (filed in these subcases on August 22, 2008). The *Eagle Decree* also clearly sets out the priority date, quantity, and place of use elements for the water rights.

2. Issues actually decided:

Similarly, and as discussed above, these issues were actually decided in the suit that led to the *Eagle Decree*. The *Eagle Decree* was issued pursuant to a summary supplemental adjudication under I.C. § 42-1424. In 1968, when the Decree was issued, the summary supplemental adjudication statute was codified at I.C. § 42-1405. See Ex. B to *Second Thompson Aff*. Under the summary supplemental adjudication procedure, the “source” of the water supply and the “priority” of use were conclusively established. See *id*. In addition, in this particular case the court also identified the “place of use” to which the water rights were appurtenant. See Ex. A to *Thompson Aff* (*Eagle Decree* identifying legal descriptions for lands to which the water rights were appurtenant). Accordingly, the issues raised by the objectors are the very issues that the *Eagle Decree* previously resolved. They are bound by those elements and subject to *Res Judicata* accordingly. See *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho at 741-42.

3. Final judgment on the merits:

The *Eagle Decree* is clearly a final judgment on the merits. Indeed, Idaho Courts have gone so far as to hold that, for *Res Judicata* purposes, even a default judgment is a final judgment on the merits. See *Waller v. Dep’t of Health & Welfare*, 192 P.3d 1058, 2008 Ida. Lexis 162 (2008). In the present matter, the original proceedings resulted in the *Eagle Decree*,

which is a final and appealable judgment on its merits. See I.C. § 42-1424. No party, including the various objectors who were joined in that proceeding, appealed the *Eagle Decree*.

For these reasons, it cannot be disputed that the action that resulted in the *Eagle Decree* and the present action here in the SRBA involves the same claim and/or issues, that the issues were actually decided in the previous action, and that the previous action resulted in a final judgment on its merits. The remaining issues are that the party against whom *Res Judicata* is asserted must have been a party to or privies with a party to the previous action and (for issue preclusion only) the party against whom it is asserted must have had a full and fair opportunity to litigate.

4. Opportunity to litigate:

The party against whom issue preclusion is asserted must have had the opportunity to litigate. However, this does not mean that the party must have actually litigated. See, e.g. *Safeco Ins. Co. v. Yon*, 118 Idaho 367 (1990). For example, in *Waller v. Dep't of Health & Welfare*, 192 P.3d 1058 (2008), the party against whom *Res Judicata* was asserted was held to have had a full and fair opportunity to litigate even though he never participated in the litigation. *Waller*, 192 P.3d at 1062. The Court held that Waller could have and should have litigated in the first case. Since he did not, he was estopped from pursuing the same issues in a second case. See *id.*

Similarly, in this case, all the objectors had the opportunity to litigate and “defend against” the SWC water rights. Pursuant to the summary supplemental adjudication provisions, notice of the *Eagle Decree* action was published in newspapers of general circulation in all relevant counties for three weeks. All objectors had the opportunity, then and there, to litigate these issues that they now seek to relitigate approximately 40 years later. Similar to the notice provision of a new water right application under Idaho Code § 42-203A(1), those persons

affected by the SWC rights who should have objected but did not at that time, should be bound and estopped from relitigating issues already decided. *See e.g. Memorandum Decision* at 13, n. 4 (subcase no. 29-11609 (“Publication notice is given and any affected person can initiate a contested case. With respect to prior decrees, not all water users hydraulically connected to the source were always joined as parties.”)).

Although the GWD’s members were not parties to the *Eagle Decree*, they or their predecessors were given adequate publication notice of the proceeding and were given the opportunity to appear and “defend against” or object to the SWC water rights at that time in open court 1968. None did. Unlike a “private adjudication”, notice of the *Eagle Decree* complaint was published and all persons affected thereby were given an opportunity to participate in the litigation. *See* Ex. A to *Second Thompson Aff.* Similar to being bound to a water right license, which is published in the same manner for protest, all of the objectors should be bound by the water rights decreed in the *Eagle Decree* proceeding. *See e.g.* I.C. §§ 42-203A(1); 42-220; *see also, Memorandum Decision* at 13 (subcase no. 29-11609) (“the binding effect of a license extends beyond parties to the administrative proceeding and their privies.”). The same standard should apply in this case as to the water rights decreed in the *Eagle Decree*, which was a summary supplemental adjudication, not just a “private adjudication” between certain water right holders.

5. Same Parties or their privies:

The application of either claim preclusion or issue preclusion generally requires that the party against whom it is asserted must have been a party or in privity with a party to the prior suit. *See Ticor Title Co.* 144 Idaho at 124. Additionally, there are situations where collateral estoppel may apply even though the party against whom it is asserted was not a party or in

privity with a party to the first case. See *Idaho St. Univ. v. Mitchell*, 97 Idaho 724, 731 (1976). This situation may exist when the claim a party subsequently brings is the same claim as was adjudicated in the original action, or where the evidence from the first case is substantially the same as would be necessary in the second case. *Duff v. Draper*, 96 Idaho 299, 304 (1974).

Idaho courts have liberally defined “party” when performing a *Res Judicata* analysis. For example, in *Ticor Title Co.*, Ticor was held to be a party even though it was never named as a party in any of the pleadings in the first action. In that case, the first suit was a Chapter 13 bankruptcy. The bankrupt, Stanion, was ordered by the Court to sell a certain parcel of real property. The title company, who was not named in the order, was instructed to pay \$650 to Stanion’s attorney, \$36,438.62 to the trustee, and that the remaining proceeds were to go to Stanion. Initially, the title company, Ticor, sent all the proceeds from the sale to Stanion. Because Stanion had not paid the trustee and/or his attorney, he received a deficiency notice. He moved the bankruptcy court to order Ticor to disburse the required amount to the trustee. Ticor did issue the check to the trustee, and then in a subsequent suit, sued Stanion for the \$36,438.62 by which he was unjustly enriched.

Although Ticor was never a named party in the bankruptcy proceeding, the Court held that Ticor was a “party” to that proceeding, that claim preclusion applied, and that Ticor should have brought the claim in the earlier proceeding and was now barred from doing so. The Supreme Court made this holding even though it appeared that, had Ticor *actually raised* the claim in the earlier proceeding, the bankruptcy court would not have had subject matter jurisdiction to entertain Ticor’s claim. *Ticor Title Co.*, 144 Idaho at 121-123.

Privity for the purposes of *Res Judicata* has been a similarly elusive concept to define. *Safeco Ins. Co. v. Yon*, 118 Idaho 367 (1990) (Questioned on unrelated grounds – intent to kill is

no longer an element of 2nd degree murder). It is clear that the litigant against whom *Res Judicata* is asserted need not have been a named party to the prior litigation. *Id.* Furthermore, the concept of due process is intertwined with privity for collateral estoppel purposes. In this context, due process requires that the party to be estopped must have had “an identity or community of interest with,” and adequate representation by, the party in the first action. Additionally, the party to be estopped should reasonably have expected to be bound by the prior adjudication. *Id.* at 371, 372.

In the facts leading up to the *Safeco* decision, Yon shot and killed Bussell. Case #1, therefore, was State vs. Yon in an action for second degree murder. It was in that case that the issue of “intent to kill” was initially decided. Case #2 was Bussell’s heirs vs. Yon in a wrongful death action. Case #3 was Safeco vs. Yon and Bussell’s heirs, in which Safeco sought a declaratory judgment that it had no duty to indemnify Yon; i.e. to pay Bussell’s heirs in the wrongful death action.

It was clear that Bussell’s heirs were not a party to the initial criminal case. Nor was Safeco. Furthermore, in the first case, Bussell’s heirs did not have privity with Yon. To the contrary, their interests were directly adverse to Yon’s. However, the Court ruled that in this context, Bussell’s heirs were in privity with Yon, and therefore they were collaterally estopped from litigating the “intent to kill issue” in case #3. *See id.* at 368-373. The Court articulated that “the only unfairness which would occur would be if collateral estoppel did not apply” and the insurance company was forced to litigate an issue that had already been decided. *Id.* at 372. Thus, in *Safeco*, Bussell’s heirs were held to be in privity with Yon even though their interests in the first case – to convict Yon – would have been directly adverse to the party they were later held to have been in privity with (Yon). From this it is clear that, for the purpose of *Res*

Judicata, privity is not the same as contract law privity; it is more about the interrelatedness of the rights and claims at issue.

In this case, the objectors were either parties, privies, or should be bound by the *Eagle Decree* despite a lack of technical privity. First, there is no question that the City of Pocatello, Blackfoot Irrigation Company, United Canal Company and Fremont-Madison Irrigation District were all parties to the *Eagle Decree* adjudication, and therefore squarely meet this requirement.

Our Supreme Court has stated that the water rights in the Snake River basin are interrelated, and therefore what is done by one water right holder necessarily impacts the rights of other water right holders. *See State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736 (1997). In this sense, all water right holders in the basin are in privity with one another for the purposes of *Res Judicata*. Additionally, since the *Eagle Decree* was issued pursuant to former I.C. § 42-1405, notice of the *Eagle Decree* action was published for 3 weeks in newspapers of general circulation in Power County, Cassia County, Minidoka County, Twin Falls County, Jerome County, Blaine County, Gooding County, Lincoln County and Elmore County, Idaho.⁴ *See* Ex. A to *Second Thompson Aff.* The Supreme Court has upheld the constitutionality of notice being provided in this manner. *LU Ranching Co. v. United States (In Re SRBA Case No. 6)*, 138 Idaho 606 (2003). Under the statute's explicit terms (as existed in 1968), after three weeks notice and expiration "of the time fixed by said order, said cause may be brought on for hearing in open court, and any party interested may appear and defend against said right." *See* Ex. A to *Second Thompson Aff.* (emphasis added). Therefore, the present objections filed by GWD and Mud Lake Users as to "source", "priority date", and "place of use", should have been

⁴ Notice was certainly published in all affected eastern Idaho counties for the Fremont County District Court case (*Aberdeen-Springfield Canal Company et al. v. Henry Eagle*) in order to comply with I.C. § 42-1405. The notices that were published will be supplemented and provided to the Court as acquired in this matter.

all been brought 40 years ago, and the objectors should reasonably have been expected to be bound by the adjudication that resulted in the *Eagle Decree*.

Moreover, the objectors are not seeking to litigate any new issues. Here, they are seeking to raise claims as to source, priority, and place of use that were decided in the *Eagle Decree*. Furthermore, any evidence which would be adduced is the same as was necessary to sustain the *Eagle Decree* in the first place. For these reasons, the objectors simply have no basis on which to ask this Court to re-evaluate the issues that they have raised in their objections.

C. WATER RIGHT HOLDERS WHO ACQUIRED THEIR RIGHTS SUBSEQUENT TO THE ISSUANCE OF THE *EAGLE DECREE* ARE PREVENTED FROM CHALLENGING THE ELEMENTS OF WATER RIGHTS DECREED IN THE *EAGLE DECREE*.

It is well established that when one acquires a water right, he acquires it subject to all prior rights. *Big Wood Canal Company v. S.H. Chapman*, 45 Idaho 380, 402 (1927). When one takes a right subject to a prior right, he cannot be injured by the existence of that prior right, for his right was always subordinate to that prior right. *See id.*

It is therefore in accordance with this rule that the holder of a right acquired subsequent to the rights established in the *Eagle Decree* cannot challenge the elements of the Decree because, as a matter of law, they could not be injured by the elements of the *Eagle Decree* and they take their rights “subject to” those previously established water rights. To find otherwise would have historically resulted in chaos. Water rights acquired subsequent to the *Foster Decree*, *Woodville Decree*, *Eagle Decree* would then have been in a position to attack the very judgments and property rights acquired in those adjudications. Moreover, any person that acquires a new water right in the Snake River Basin in the future will be similarly bound by the decrees entered in the SRBA. To find otherwise would render this adjudication meaningless.

For this reason, all objections filed by objectors that acquired water rights subsequent to the issuance of the *Eagle Decree* are without legal basis and must be rejected.

D. THE DIRECTOR PROPERLY RECOMMENDED THE SEASON OF USE FOR THE SWC WATER RIGHTS AS 3/15 TO 11/15 AND THE ELEMENT SHOULD BE DECREED AS A MATTER OF LAW.

Pursuant to Idaho Code § 42-1411, the Director is required to prepare a report with specific elements of a water right, including “the period of the year when water is used for such purposes.” I.C. § 42-1411(2)(g). For “irrigation” water rights, IDWR prepared an administrator’s memorandum, Adjudication Memo #39 (“*Memo #39*”), that describes the standards used for the “season of use” to recommend for water rights in various locations across the basin. *See* Ex. C to *Second Thompson Aff.* IDWR explains in *Memo #39* as follows:

A new 1:1,000,000 scale map of the “Irrigation Season of Use” (map at the end of the memo) presents a new standard for use in water right adjudication and water right licenses, permits, and transfers. A reduced reproduction of the map is attached to the memo; the reduced reproduction is for illustrative purpose only. The official version of the map is in digital form and can be accessed by contacting the Adjudication Bureau. A full-size copy of the map is available in the SRBA map case.

The purpose of these maps is to provide consistent standards in a simple format. . . .

The standard season from the new map is to be used for recommendations in the SRBA as described in the Claim Investigation Handbook.

Memo #39 at 1, 2. Ex. C to *Second Thompson Aff.*

All SWC irrigation water rights in this proceeding were recommended with the standard “3/15 to 11/15” season of use, pursuant to the area as defined in the *Memo #39* map.⁵ Accordingly, IDWR followed the prescribed standard procedure when issuing the water right

⁵ Except Falls Irrigation District’s water right 1-13, which includes a season of use of 4/1 to 10/31. This is the standard season provided by IDWR’s *Memo #39*. FID is entitled to a 4/1 to 10/31 season of use as a matter of law.

recommendations. Pursuant to Idaho law, IDWR's recommendation is presumed to be correct. *See Idaho Code § 42-1411(4).*

Whereas the SWC water rights were previously licensed or decreed without a defined irrigation "season of use", IDWR recommended the standard season consistent with *Memo #39* and the Idaho Supreme Court's decision in *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411 (1998). On rehearing in *A&B*, the Idaho Supreme Court held that the period of use for water rights decreed in the SRBA must be identified by specific dates, rather than simply being identified as "irrigation season". 131 Idaho at 424.

GWD and others have objected to the recommended season of use element for the SWC water rights and has stated that it "should be limited to the high-flow period only, ending in late June or early July". *See generally, GWD Amended Objections.* The objections fail as a matter of law under the Idaho Supreme Court's decision in *A&B*.

First, in *A&B*, the Supreme Court initially agreed with the SRBA District Court and affirmed the "irrigation season" as the proper "season of use" for the water rights at issue in that case. 131 Idaho at 415. However, on rehearing, the Court withdrew that portion of its opinion and held that "each irrigator's water right shall be decreed with a specific period of use setting for the beginning date and an ending date, as previously adhered to by the IDWR." *Id.* at 424. On October 12, 1999 IDWR issued *Memo #39* shortly after the Court's decision in *A&B*.

GWD's objections seek a vague and undefined "season of use" ending in "late June or early July". These objections fail as a matter of law since they violate the standard set forth by the Idaho Supreme Court in *A&B*. Just as the "irrigation season" is insufficient to define the water right, so is a season of use that ends "in late June or early July". Whereas IDWR has defined a specific beginning date and ending date pursuant to its standard procedures and the

requirement stated in *A&B*, the GWD objections do not and therefore should be dismissed as a matter of law.

E. THE PRIORITY DATES FOR THE SWC WATER RIGHTS ARE DEFINED BY PRIOR DECREE OR LICENSE AND SHOULD BE DECREED AS RECOMMENDED.

No objections were filed to the “priority date” element for the following water rights, including those held by or for the benefit of the SWC claimants: 1-4, 1-5, 1-6, 1-16, 1-17, 1-209, 1-210, 1-211A, 1-211B, 1-212, 1-213, 1-214A, 1-214B, 1-219, 1-2061, 1-10034, 1-10225, 1-10237, 1-10238, 1-10239, 1-10240, 1-10241, 1-10482. Accordingly, since IDWR’s recommendations are uncontested, the Court can recommend for decree the priority date elements for these water rights as a matter of law. *See* I.C. § 42-1411(4).

As to the recommended priority date for water rights 1-7, 1-8, 1-9, 1-10, 1-13, and 1-14, the priority date of April 1, 1939 was previously established by the *Eagle Decree*. The priority date was critical as it established that these natural flow water rights would be senior to the new storage right for Palisades Reservoir. Accordingly, IDWR recommended the priority date consistent with the prior decree and the water rights have been administered pursuant to those priority dates since 1968. In summary, the objections by the GWD fail as a matter of law since the priority dates for these water rights have already been judicially determined.

As to the recommended priority date for Milner Irrigation District’s water right 1-2050, IDWR erroneously recommended a July 11, 1968 priority date. This water right was previously licensed by IDWR with an October 25, 1939 priority date. *See* Ex. G to *Thompson Aff.* (filed August 22, 2008). Pursuant to Idaho law and the law of the case in the SRBA, IDWR cannot recommend a different priority date than what it previously licensed. *See* I.C. § 42-220; *Order on Challenge (Consolidated Issues) of “Facility Volume” Issue and “Additional Evidence” Issue*

(subcases 36-02708 *et al.*) (Dec. 29, 1999); *Memorandum Decision and Order on Challenge and Order Disallowing Water Right Based on Federal Law* (subcase no. 29-11609) (Oct. 6, 2006).

Stated another way, IDWR is bound to accept the priority date it previously licensed water right 1-2050 for, October 25, 1939. IDWR cannot collaterally attack that license and recommend a different priority date in the SRBA. Similarly, GWD's objection to the priority date for water right 1-2050 also fails as a matter of law since "the binding effect of a license extends beyond the parties to the administrative proceeding and their privies." *Memorandum Decision* at 13 (subcase no. 29-11609). Accordingly, the Court should grant Milner summary judgment as to the priority date element for water right 1-2050, recommending an October 25, 1939 priority date and dismissing the objections as a matter of law.

F. AS A MATTER OF LAW, THE CONDITIONS AND REMARKS REQUESTED BY GWD CANNOT BE INSERTED INTO THE WATER RIGHTS.

In its Motion for Summary Judgment, GWD claims that "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." *GWD Motion for Summary Judgment*, p. 2. The issue of the "Snake River" as the "source" of these water rights is set forth in the SWC's first *Joint Motion for Summary Judgment* filed on August 22, 2008. From a factual standpoint, GWD's affiants do not support its position that the water rights "consist primarily of snow melt and spring runoff" and that a condition is necessary. More importantly, GWD's request that the Court, in the adjudication, should mandate that "these water rights are not entitled to make a delivery call against junior priority ground water rights" is contrary to law, and GWD offers no legal support for its position. The Court should enter summary judgment denying GWD's requested conditions and remarks.

1. GWD's Affiants Do Not Support Its Position.

In the Affidavits of Anthony Olenichak and Ronald D. Carlson, prepared and filed by GWD in support of its Motion for Summary Judgment, both affiants make statements that the water rights at issue have "spring runoff and snow melt" as their supply. However, when their depositions were taken, the affiants admitted that the water rights were delivered long after spring runoff and snow melt was completed, Mr. Olenichak's definition of a "high water" right was plainly misrepresented by GWD and Mr. Olenichak does not believe that any condition or remark is necessary.

GWD's expert, Ron Carlson, admits that the water rights are delivered long after the spring runoff and snowmelt are over:

Carlson Depo., p. 98

4 Q. Okay. So water delivered after June
5 or July in most years under the 1903 right or the
6 1908 right in August, September, October, that is
7 not natural-flow water?

8 A. That is natural-flow water.

9 Q. Okay. So if in most years we can show
10 you that 1903 water is delivered in August,
11 September, or October --

12 A. Uh-huh.

13 Q. -- would you agree that this is a
14 false statement?

15 A. No.

16 Q. Why would this not be a false
17 statement?

18 A. All that says -- all that says is that
19 the river no longer is -- breaks at Blackfoot, and
20 you again have a demand that you can make -- place
21 on the river above Blackfoot. And so the return
22 flows and all those things that are coming in
23 upstream from Blackfoot now get distributed
24 without reference to Blackfoot.

25 Q. But those are natural flows; correct?

p. 99

1 A. They are.

2 Q. And those natural flows consist then
3 not of spring runoff, do they?

4 A. Yeah, what they consist of then is the
5 fact that people upstream and downstream are
6 curtailing their water use, and so the water
7 rights are no longer demanding that water. And to
8 the extent that you can use it downstream, you get
9 to use it.

10 Q. And they're not made up of runoff --

11 A. Well --

12 Q. -- of spring runoff at that point;
13 correct?

14 A. That's correct.

15 Q. And they're not made up of snowmelt;
16 correct?

17 A. That's correct.

18 Q. They're made up of whatever is in the
19 river at that time?

20 A. That's -- that is true.

21 Q. So this statement is not correct, this
22 statement is a false statement; isn't that true?
23 There is water available to deliver to junior
24 water rights in the reaches of the river below
25 Blackfoot?

p. 100

1 A. There are some years when there is
2 water available late in the season that can be
3 delivered to junior water rights.

4 Q. Did you examine water delivery records
5 from, say, 1960 through 1976 when you prepared
6 this affidavit?

7 A. I've reviewed those records. I don't
8 know if I did it for this affidavit.

9 Q. Okay. Under water right 1-211A, which
10 is the 1903 priority date, can you disagree with
11 my representation that that water right was
12 delivered 16 out of 17 years during that time
13 period, in August, September, and October?

14 A. Yeah, as a matter of fact, the
15 process -- well, it wasn't delivered because the
16 river wasn't on regulation. It was just a
17 free-for-all for water. So after September 15th,
18 the watermaster usually just says that water --

19 the river is no longer on regulation.
20 Q. So when you say it wasn't delivered,
21 you're saying that the water district doesn't have
22 any records of that?
23 A. No. What I'm saying is that the
24 watermaster at that point allowed whoever wanted
25 to take water and use it, sort of as a

p. 101

1 free-for-all.
2 Q. But would you disagree that water
3 represented by those rights was diverted by those
4 entities during those years?
5 A. Oh, sure.
6 Q. In August, September, and October?
7 A. Well --
8 Q. Not every year in August, September,
9 October. I'm not trying to mislead you there.
10 But some years all three months?
11 A. Absolutely.
12 Q. Some years September, October? Some
13 years August, September? So water would be
14 available for delivery during that time,
15 natural-flow water to those entities; correct?
16 A. That's correct.

Carlson Deposition Tr. pp. 98-101. *See* Ex. D to *Second Thompson Aff.*

GWD's other witness, Anthony Olenichak, disagrees that a recommendation or comment
as requested by GWD is necessary:

Olenichak Deposition p. 75

15 Do you agree with the ground water
16 district's assertion in this case that some kind
17 of notation needs to be made on these water
18 rights?
19 A. No.
20 Q. Why doesn't that need to happen?
21 A. When Water District 1 calculates the
22 amount of natural flow each day, we deliver that
23 based on priority date. There's no distinction
24 between what is high water, whether it's computed
25 from spring water, from snowmelt. We simply

p. 76

- 1 deliver according to the priorities and the amount
- 2 of water in the river system each day.

Olenichak Depo. Tr. pp. 75-76. *See* Ex. E to *Second Thompson Aff.*

In addition, GWD did not accurately state Mr. Olenichak's definition of a "high water right in his affidavit and has not accurately represented it to the Court:

Olenichak Depo, p. 70

- 6 Q. Do you consider the 1903 right a
- 7 high-water right under your definition?
- 8 A. I would not.
- 9 Q. You do not?
- 10 A. No.
- 11 Q. And why don't you?
- 12 A. I think from most water users I talk
- 13 to, generally 1916 is a high-water right. Once
- 14 you start getting down below or more senior to
- 15 1916 -- for instance, the 1905s, 1903s -- I think
- 16 in most years you could probably, especially in
- 17 the lower valley, irrigate a crop with those water
- 18 rights.
- 19 And from my definition of a high-water
- 20 right, it would be -- a high-water right would
- 21 have to be insufficient to raise a crop, in most
- 22 years.
- 23 Q. And when you're talking about 1916,
- 24 you're talking about systemwide on the entire
- 25 Upper Snake --

p. 71

- 1 A. Yes.
- 2 Q. -- as the cutoff date for that?
- 3 Did you tell that information to
- 4 Candice McHugh?
- 5 A. Yes.
- 6 Q. I didn't see that in your affidavit.
- 7 Is there some reason that date isn't
- 8 in your affidavit?
- 9 A. No. Every word I said is not in the
- 10 affidavit.
- 11 Q. Did you cut out some words or did she
- 12 cut out some words?
- 13 A. I gave her a long, general explanation

14 of what my definition of a high-water right. She
15 sent this back to me. I reviewed it. And it was
16 within what I had defined, and I signed the
17 affidavit.

18 Q. So these water rights that are on this
19 attached list with priority dates before 1916 you
20 would not consider high-water rights?

21 A. I would not consider -- generally,
22 1916 is where I draw the line for a high-water
23 right.

24 Q. Okay. So when you're talking about
25 high-water rights in this affidavit, you're

p. 72

1 talking about water rights with priority dates of
2 1916 and after?

3 A. Well, specifically, the water rights
4 listed in paragraph 12 is what I was referring to.
5 And I believe they are all junior to 1916.

6 Q. So when you were making these
7 comments, you weren't referring to Minidoka
8 Irrigation District's 1903 right or 1908 right?
9 You weren't referring to Burley Irrigation
10 District's 1903 right or 1908 right or any of Twin
11 Falls rights? It could be through all these. But
12 the bottom line is you're only referring to the
13 1916 --

14 A. The only rights I was referring to was
15 the ones listed in 12.

p. 78

4 Q. Okay. So I don't want to beat this
5 into the ground, but your affidavit is only
6 addressing the water rights in paragraph 12?

7 A. Yes.

8 Q. Only those water rights?

9 A. Yes.

10 Q. And you have no intention to address
11 any of the other water rights listed on Exhibit A
12 to your affidavit?

13 A. Correct.

14 Q. Okay. I see. I see. The Exhibit A
15 was attached simply because it's part of the
16 pleading in this case; is that correct? That's
17 the caption of the case?

18 A. I thought the purpose of my affidavit

19 was for these rights she listed in the affidavit
20 only.

Olenichak Depo. Tr. pp. 70-72, 78. *See* Ex. E to *Second Thompson Aff.*

These comments are consistent with the laws of the State of Idaho in regard to the source water that is available under a water right when water may be diverted under the priority of the water right. As noted by Justice Givens in *Board of Directors v. Jorgensen*, 64 Idaho 538, 136 P.2d 461, 475 (1943), “an appropriator does have, after diversion and application to a beneficial use, a constitutional right to the continuation of the source of his supply of water as it physically existed at the time his appropriation was made.”

In *Reno v. Richards*, 32 Idaho 1, 178 P. 81 (1918), the Idaho Supreme Court, in rejecting the requirement that a showing must be made as to when the water is available under a water right to be a valid right, stated: “... the court by its decree determines the relative priorities of rights, and in case any prior rights are abandoned, or are not being used for any season, or a portion thereof, the right of the users to have their claims supplied from the stream adjusts itself automatically.” 178 P. at 87.

2. There is no Legal Basis for the Court to Subordinate Senior Surface Water Rights to Junior Groundwater Rights.

By requesting that the Court insert a condition that the senior surface water rights cannot make a call against junior ground water rights, GWD is effectively asking the Court to subordinate senior rights to junior rights, ignore IDWR’s Conjunctive Management Rules (IDAPA 37.03.11 *et seq.*), and asking the Court to usurp the Director’s administrative authority.

Initially, it must be pointed out that GWD supplies no legal authority for its position, and its affiants provide no foundation for the argument that this type of remark is supported by the administrative practices of IDWR. The law does not support GWD’s argument.

The Director of IDWR has the authority to supervise water distribution in the State. *See* I. C. §42-602. In the event of a surface water right to ground water right call, the Director's actions are governed by IDAPA 37.03.11 *et seq.* (Conjunctive Management Rules or CMR). The Director is required to take certain actions and determine if material injury is occurring. *See* CMR 40. GWD is trying to have the Court eliminate this statutorily required analysis and "prejudge" whether a junior right is injuring the senior surface water rights in these subcases. In order to make this recommendation, not only would the Court have to ignore the statutory duties of the Director, it would have to ignore the "connected sources" general provision of the SRBA Court in *Basin Wide 5*, discussed elsewhere in this brief.

There is no showing that such a remark is necessary for administration. Ground water and surface water rights are currently being administered by IDWR, and have been for over the last five years. Indeed, water districts have been created by IDWR since 2002 in part to conjunctively administer junior priority ground water rights to protect senior surface water rights. The requests of GWD in this proceeding are more in the nature of a defense to a water right delivery call – an issue that should be raised before IDWR in an administrative proceeding and dealt with on a case-by-case basis.⁶

Hopefully, the Court will see this request for what it is – GWD is requesting that the Court unlawfully subordinate senior surface water rights to much junior ground water rights. There is no legal basis for this type of remark or condition. The Court should deny Objectors' Motions for Summary Judgment and grant the Motions for Summary Judgment filed by the SWC.

⁶ Notably, GWD raised these very defenses in the Surface Water Coalition delivery call, which were denied and not appealed. The case is currently on appeal before the Gooding County District Court, *A&B Irrigation Dist. et al. v. Tuthill et al.* (Fifth Jud. Dist., Case No. 08-551), with the Honorable John M. Melanson presiding in his capacity as a district judge.

V. CONCLUSION

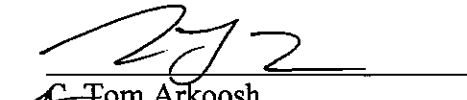
The objections have no legal basis. Several of the objectors were parties to the *Eagle Decree* proceedings and, without question, are bound by that supplemental adjudication. Furthermore, the principles of *Res Judicata*, which apply with particular force in proceedings such as these, require that the remaining objectors be estopped from challenging decreed elements that they have already had ample opportunity to litigate. Finally, any rights acquired subsequent to the rights set forth in the *Eagle Decree* are subject to those prior rights, and as a matter of law, cannot be injured and therefore the holders of these rights have no basis on which to object.

In addition the unobjected to priority date elements for the water rights listed should be recommended for decree as a matter of law. Also, Milner Irrigation District's water right 1-2050 should be recommended for decree with a October 25, 1939 priority date as previously licensed by IDWR. Next, the Court should recommend for decree the "season of use" as 3/15 to 11/15⁷ as a matter of law, consistent with the Supreme Court's decision in *A&B* and IDWR standard procedure. Finally, the conditions and remarks requested by GWD are not necessary nor supported by any law and therefore should be dismissed. For all these reasons, the SWC respectfully requests this Court to grant summary judgment in their favor and disallow the objections.

DATED this 25th day of June, 2009.

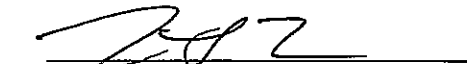
CAPITOL LAW GROUP PLLC


Roger D. Ling
Attorney for A & B Irrigation District,
Burley and Falls Irrigation Districts


C. Tom Arkoosh
Attorneys for American Falls
Reservoir District #2

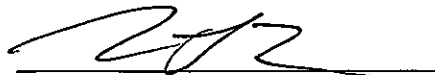
⁷ 4/1 to 10/13 for Falls Irrigation District's water right 1-13.

FLETCHER LAW OFFICES


W. Kent Fletcher

Attorneys for Minidoka Irrigation District

BARKER ROSHOLT & SIMPSON LLP



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

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Milner Irrigation
District, North Side Canal Company, and
Twin Falls Canal Company*

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2009, I served a true and correct copy of the foregoing *Memorandum in Support of Claimants' Second Joint Motion for Summary Judgment* 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

☐ 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

☒ 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

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

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

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

Jerry Rigby
25 N. 2nd E.
P.O. Box 250
Rexburg, Idaho 83440-0250

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

Robert Harris
1000 Riverwalk Dr., Suite 200
P.O. Box 50130
Idaho Falls, Idaho 83405

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

Randy C. Budge
Candice M. McHugh
Racine Olson
101 S. Capitol Blvd, Suite 208
Boise, Idaho 83702

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

Craig Hobdey
125 5th Ave.
P.O. Box 176
Gooding, Idaho 83330

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

Sarah A. Klahn
White & Jankowski, LLP
Kittredge Building
511 16th St., Suite 500
Denver, CO 80202

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

A. Dean Tranmer
City of Pocatello
P.O. Box 4169
Pocatello, Idaho 83201

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

William A. Parsons
137 W. 13th St.
P.O. Box 910
Burley, Idaho 83318

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

Adam T. Devoe
James S. Lochhead
Brownstein, Hyatt & Farber, PC
410 17th Street, 22nd Flr.
Denver, CO 80202

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

Josephine P. Beeman
409 W. Jefferson St.
Boise, Idaho 83702

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

Patrick D. Brown
Hutchinson & Brown, LLP
104 Lincoln St.
P.O. Box 207
Twin Falls, Idaho 83303-0207

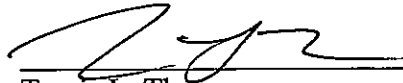
☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

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

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

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

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



Travis L. Thompson

Attachment 1

1-4
1-5
1-6
1-7
1-8
1-9
1-10
1-13
1-14
1-16
1-209
1-210
1-211A
1-211B
1-212
1-213
1-214A
1-214B
1-219
1-2050
1-2061
1-10034
1-10237
1-10238
1-10239
1-10240
1-10241
1-10482