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**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	)	Subcase Nos. 01-23B, 01-297, 35-2543 & 35-4246
	)	(Aberdeen-Springfield Canal Co.)
Case No. 39576	)	
	)	REPLY IN SUPPORT OF OBJECTORS' MOTION
	)	TO ALTER OR AMEND

COME NOW, Objectors, 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 referred to as the "Coalition"), by

and through counsel of record, and submit this reply in support of their *Motion to Alter or Amend* this Court's April 23, 2010 *Special Master Report* ("SMR") in the above subcases.

The issues before this Court are clear. The law underlying those issue is equally clear. For example, there is no dispute that "recharge" was not a legally recognized beneficial use prior to 1978. Likewise, the Idaho Code Section 42-1425 clearly demands a remand when an objection is filed to an accomplished transfer. Rather than address these plain legal issues, however, the response briefs either attempt to distract the Special Master from the true issues (the State) or simply attack the Coalition's motives (Aberdeen-Springfield Canal Company, "ASCC"). In the end, neither response justifies the unlawful attempt to create a beneficial use where none existed and to deny the Coalition its hearing before the Director.

The State's response simply misses the point. It asserts that the "considerable benefits" of recharge have long been recognized – even before 1978. The State fails, however, to identify any law recognizing recharge as a beneficial use prior to 1978. Rather than actually addressing the law, the State simply accuses the Coalition of failing to present any evidence to rebut the Director's Report. Moreover, the Coalition was prevented from the opportunity to present evidence with denial of the administrative transfer proceeding. Furthermore, the Coalition has provided significant briefing explaining that the law did not recognize "recharge" as a beneficial use prior to 1978 and that, as a result, the recommendation o "Recharge for Irrigation," with a priority date of 1895, is unlawful. It is unclear what else the State desires in this case. Surely, a showing that the Director's Recommendation is contrary to the law is sufficient to overcome the presumptions afforded the Director's Report.

Demonstrating a misunderstanding of the accomplished transfer statute, I.C. § 42-1425, the State asserts that "the Director does not have jurisdiction to conduct a contested case

proceeding in the [SRBA].” This has never been the Coalition’s argument and it is unclear where the State’s confusion on this point arose. The State further accuses the Coalition of attempting to use the remand provisions of the accomplished transfer statutes to “obtain testimony it failed to secure during a court-ordered discovery period.” This argument is simply unwarranted conjecture and is unsupported by anything in the record. Contrary to the State’s assumption, the Coalition simply seeks an order from this Court that complies with the plain language of the statute.

This same Special Master recently denied a *Motion to Remand Subcases* (Subcases 75-10061AA, *et al.*) after engaging in a strict reading of Section 42-1425. In those subcases, a group of water users sought remand under the accomplished transfer statute. However, the motion was denied after the Special Master found that their water rights did not exist at the time the accomplished transfer took place. According to the Special Master, the accomplished transfer provisions only required remand to address injury to other rights “existing on the date of the change.” *Order Denying Motion to Remand Subcases* (June 11, 2010). Similarly, the Special Master should incorporate a strict reading of the accomplished transfer statute in these subcases. The law is clear. The Coalition’s rights existed on the date of the alleged transfer and an objection has been filed to the accomplished transfer. As such, remand is required.

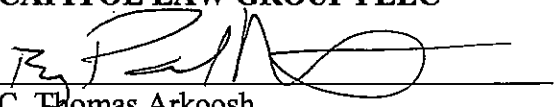
In a stark departure from the response of the State, ASCC does not respond to the Coalition’s motion. Rather, it accuses the Coalition of failing to comply with the standard of review. Yet, the Coalition’s entire motion explains why the *SMR* is contrary to law and should be altered or amended to correct a “manifest error.” Aside from its standard of review arguments, ASCC simply attacks the motives of the Coalition and accuses the Coalition of trying to waste the Court’s time – calling the motion “a clear waste of the Court’s time and the parties’

resources.” Remarkably, ASCC even accuses the Coalition of “abusing and misusing the rules.” Such baseless vitriol has no place in this Court. Indeed, ASCC has done nothing but demonstrate a lack of knowledge as to the requirements of AO1.¹ Since ASCC did not respond to anything in the Coalition’s brief, there is nothing to which the Coalition must reply.

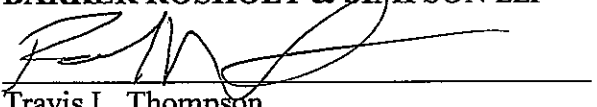
The Special Master’s recognition of “recharge for irrigation” as a beneficial use with an 1895 priority date is not supported by the law. That use was not lawfully recognized until at least 1978. Furthermore, the refusal to remand the water rights to the Department for further harm analysis – as plainly required by the accomplished transfer statute – cannot stand. Accordingly, the Special Master should alter and amend the *SMR* for the above water rights.

DATED this 29th day of June, 2010.

CAPITOL LAW GROUP PLLC

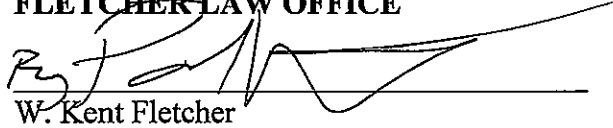

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¹ ASCC’s motion also demonstrates a misunderstanding of the AO1 provisions governing these proceedings. ASCC asserts that “the relief sought by the Surface Water Coalition can and undoubtedly will be presented to the SRBA Presiding Judge by appropriate challenge, not to this Court.” Although the Coalition cannot know whether or not it will challenge the Special Master’s final decision before the Presiding Judge until an order on this pending motion is issued, AO1 makes it clear that no challenge can be filed unless a Motion to Alter or Amend is filed. AO1 13(c).

CERTIFICATE OF SERVICE

I certify that on June 29, 2010, I served the original and copies of the foregoing to the following persons as indicated:

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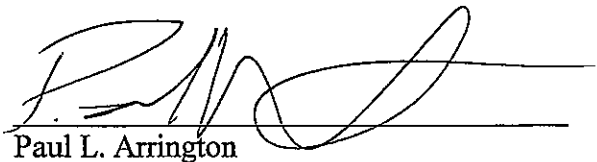
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