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DEPARTMENT OF
WATER RESOURCES

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District, North Side Canal Company, &
Twin Falls Canal Company*

**IN THE 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.: 01-1J, *et al.*; 01-4046, *et*
) *al.*; 21-48, *et al.*; 22-163A, *et al.*; 35-

) 2315; 35-2543 & 35-4246

)

) SEE ATTACHMENTS A, B, C, D & E

)

) COALITION'S MOTION TO

) CONSOLIDATE SUBCASES

) BEFORE SPECIAL MASTER

) BILYEU

)

COMES NOW, 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 “Surface Water Coalition” or “Coalition”), by and through their undersigned attorneys of record, and move this Court for an order consolidating the above subcases before Special Master Bilyeu for the purpose of deciding the common issue of “recovered water.” Counsel for the Coalition has discussed this matter with counsel for the Claimants, Jerry Rigby, counsel for the Idaho Ground Water Appropriators, Inc., Candice McHugh, and counsel for the United States, David Gehlert, and each supports consolidation of these subcases.¹

Currently pending in the SRBA are a large number of Objections, filed by claimants to water rights, seeking authorization to divert groundwater under a theory that the ground water is actually “recovered” water from irrigation under surface water rights. The Coalition has filed responses to each of these subcases. Since 2006, the parties have attempted to resolve the objections, but have not reached an agreement. On August 23, 2010, the Claimants filed *Motions to File Amended Notice of Claim* in each of the subcases identified above.

The above subcases are currently pending before two Special Masters. Those claims in Basins 21, 22 and 27, *see* Attachments B, C & D, are pending before Special Master Bilyeu. The hearing on the Claimants’ motion to amend their claims in these subcases is set for October 13, 2010. Those claims in Basins 01 and 35, *see* Attachments A & E, are pending before Special Master Dolan, with a hearing on the Claimants’ motion set for October 14, 2010. The issue of “recovered water” is identical among all of the subcases.

Although these subcases are pending before two Special Masters, there has been an effort to ensure that they “proceed in parallel.” Special Master Bilyeu, who has presided over a large majority of the subcases, generally holds status conferences and sets deadlines first, with Special

¹ Counsel for the claimants indicated that, although he does not oppose consolidation, he could not take a position as to the Special Master who should preside over the consolidated subcases until he discussed the matter further with his clients.

Master Dolan following suit. For example, in the July 27, 2010 *Amended Scheduling Order*, Special Master Dolan set dates that would allow “the above subcases [to] proceed in parallel with subcases before Special Master Brigitte Bilyeu” and that were identical to those set in Special Master Bilyeu’s April 2, 2010 *Order Setting Deadline & Status Conference*.

As a function of having these subcases pending before two Special Masters, it is necessary for the parties to prepare for multiple status conferences and hearings. For example, although the Claimants’ motion to amend their claims are substantially identical and all involve the same issues, the parties must prepare for hearings in front of both Special Master Bilyeu and Special Master Dolan. Should these subcases proceed to trial, the parties will be forced to prepare for two summary judgment hearings and two trials to resolve substantively identical issues.

The Idaho Rules of Civil Procedures allow the Court to consolidate matters that “involve[e] a common question of law or fact.” Rule 42(a). The rule allows the Court to “order a joint hearing or trial of any or all the matters in issue in the actions” and to “make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

Consolidation is appropriate here. First, each of the subcases identified above involve an identical question of law and fact: the validity of a claim to “recaptured water.”

Second, consolidation would allow the Court and parties to “avoid unnecessary costs” by allowing them to prepare for only one hearing and/or trial. As stated above, to date, these subcases have proceeded before two Special Masters – a process requiring extra time and expense by the parties involved. Unless consolidated, the Court and parties will be forced to prepare for additional multiple conference and hearings, as well as trials. This is the case, even though the issues are identical.

The Parties have long considered consolidation an option in these subcases. As stated above, the parties contacted do not oppose consolidation. Special Master Dolan recognized as much in his July 27, 2010 *Amended Scheduling Order* – there is a “goal of likely consolidation and trial on the common issue of ‘recovered water.’” Furthermore, in her *Trial Scheduling Order*, dated August 6, 2010, Special Master Bilyeu set a deadline for filing a motion to consolidate.

Consolidating these subcases before one Special Master for the purpose of deciding the “recovered water” issue is consistent with the intent of the rule to “avoid unnecessary costs or delay.” As the parties proceed in these subcases, preparing for potential summary judgment hearings and trial, consolidation will avoid the necessity to duplicate work.

Finally, since she has presided over the vast majority of the “recovered water” subcases, and has generally taken the lead on status conference and deadlines, the subcases should be consolidated before Special Master Bilyeu.

Accordingly, the Coalition moves the Court for an order consolidating the above subcases before Special Master Bilyeu for the purpose of deciding the common questions relating to “recovered water.”

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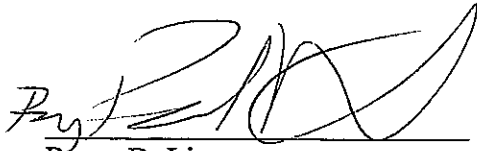
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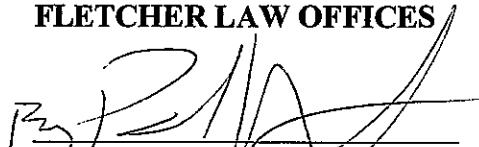
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Dated this 17th day of September, 2010.


Roger D. Ling

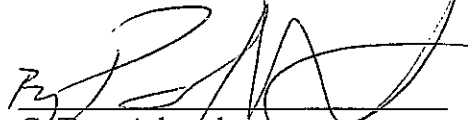
Attorneys for A & B Irrigation District

FLETCHER LAW OFFICES


W. Kent Fletcher

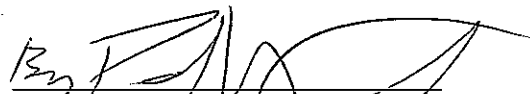
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Irrigation District, Milner Irrigation
District, NSCC, and TFCC*

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September, 2010, I served a true and correct copy of the foregoing **COALITION'S MOTION TO CONSOLIDATE** on the person(s) listed below, in the manner indicated:

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P.O. Box 83720
Boise, ID 83720-0098

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RIGBY THATCHER ANDRUS RIGBY
KAM & MOELLER, CHTD.
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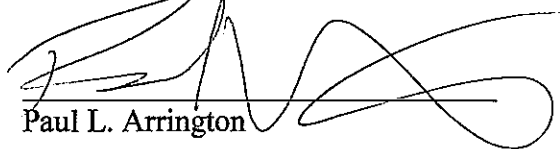
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Paul L. Arrington

ATTACHMENT A

01-1J	01-141	01-260	01-10050
01-2A	01-146A	01-261	01-10057
01-47E	01-146B	01-263	01-10060
01-48	01-147	01-264	01-10062
01-52A	01-148	01-266	01-10091
01-52B	01-157A	01-298	01-10092
01-53A	01-157B	01-304	01-10471
01-92A	01-158B	01-306	01-10472
01-92B	01-193A	01-324	01-10474
01-116BB	01-193B	01-4061	01-10475
01-131A	01-232	01-10046	01-10476
01-132A	01-247	01-10048	01-10477
01-133A	01-259	01-10049	

ATTACHMENT B

21-48	21-2122	21-7173	21-12908
21-49	21-2129	21-7175	21-12910
21-60B	21-2154	21-7194	21-12911
21-73B	21-2156	21-7300A	21-12912
21-73D	21-2161	21-7564	21-12919
21-73F	21-4114	21-10286	21-12921
21-73J	21-4155	21-10463	21-12923
21-75	21-7007	21-10527	21-12934
21-109C	21-7024	21-10560	21-12946
21-141	21-7027	21-10890	21-12952
21-148	21-7033	21-10892	21-12954
21-159	21-7046	21-10921	21-12955
21-165	21-7049	21-10930	21-12957
21-2000	21-7050	21-10944	21-12961
21-2035	21-7060	21-11088	21-13018
21-2037	21-7089	21-12358	21-13019
21-2103	21-7104	21-12858	
21-2118	21-7138	21-12889	
21-2119	21-7152	21-12896	
21-2121	21-7170	21-12902	

ATTACHMENT C

22-163A	22-592	22-7198	22-11666
22-195	22-593	22-7204	22-12520
22-196	22-594	22-7207B	22-12647
22-205	22-656	22-7225	22-12656
22-207A	22-658	22-7236	22-13164
22-235	22-659	22-7259	22-13165
22-265E	22-660	22-7269	22-13343
22-344	22-673	22-7276	22-13344
22-354	22-2131	22-7287	22-13347
22-421	22-2147	22-7324	22-13388
22-422	22-2171	22-7326	22-13412
22-454	22-2180	22-7440	22-13461
22-455	22-2192	22-7593	22-13466
22-456	22-2200	22-7672	22-13467
22-457	22-2222	22-10170	22-13468
22-469	22-2226	22-10775	22-13469
22-476	22-2287	22-10904	22-13470
22-477	22-2294	22-10906	22-13471
22-492	22-2303B	22-11003	22-13472
22-512	22-7015	22-11004	22-13475
22-513	22-7022	22-11044	22-13480
22-514	22-7032	22-11070	22-13505
22-537C	22-7035	22-11185	22-13506
22-538C	22-7057	22-11259	22-13522
22-549	22-7174	22-11260	22-13592
22-591	22-7190	22-11329	

ATTACHMENT C

27-2125A

27-2126

27-7005

27-7065

27-7089

27-7093

27-7095

27-7098

27-7260

27-7306

27-7315

27-7561

ATTACHMENT D

35-2670B

35-2670C

35-2670D

35-2315

35-2543

35-4246
