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DEPARTMENT OF
WATER RESOURCES

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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: 1-4, 1-6, 1-10 and
1-209**

**MOTION TO FILE SECOND
AMENDED OBJECTIONS AND
MEMORANDUM IN SUPPORT**

The Aberdeen American Falls Ground Water District, Bingham Ground Water District, Bonneville Jefferson 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") by and through their counsel of record, and hereby move the Court for leave to file Second Amended Objections in Subcase Nos. 1-4, 1-6, 1-10, and 1-209, pursuant to Rule 1.a of SRBA Administrative Order 1 and Rule 15(a) of the Idaho Rules of Civil Procedure, and submit this Memorandum in Support thereof.

Water right nos. 1-4, 1-10 and 1-209 are claimed by Twin Falls Canal Company. Water right no. 1-6 is claimed by American Falls Reservoir District No. 2. The water rights claimed by Twin Falls Canal Company and American Falls Reservoir District No. 2 and the subject of this motion, are water rights based on a prior decree and are not licensed water rights.

The bases for this motion are as follows. On November 3, 2010, the Honorable Eric Wildman issued his *Memorandum Decision and Order on Petitions for Rehearing* (“*Decision on Rehearing*”) in *A & B Irr. Dist. v. Idaho Dep’t of Water Resources*, Case No. 2009-647 (Minidoka County 2010) (“A&B Delivery Call Case”). In that decision the Court determined that the decree in the SRBA determined the “present beneficial use requirement” (*Decision on Rehearing* at 14) and that “the appropriate time for contesting the Department’s recommendation as to quantity was in the adjudication” [for A&B’s water right] and rejected the argument that the decree reflects a maximum amount needed based on historic maximums and not necessarily present need (see *Decision on Rehearing* at 18).

The Ground Water Districts have the following objections pending on the above listed subcases:

Quantity Should be: A condition should be added to reflect that for conjunctive administration the quantity of water available to supply this right has historically been limited to the period of high flows resulting from snowmelt. Accordingly, consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply. Additionally, for purposes of conjunctive administration, the irrigation requirement for purposes of a delivery call, the quantity should not exceed 5/8 inch per acre head gate delivery.

Place of Use Should be: For purposes of conjunctive administration, the irrigation requirement for purposes of a delivery call is limited to actual irrigated acres.

(emphasis added). The pending objections are too restrictive given the recent court ruling, and as such, the Ground Water Districts move this court to allow them to amend their objections on subcase nos. 1-4, 1-10, and 1-209 claimed by Twin Falls Canal Company and 1-6 claimed by American Falls Reservoir District No. 2 as follows:

Quantity Should be: A condition should be added to reflect that for conjunctive administration the quantity of water available to supply this right has historically been limited to the period of high flows resulting from snowmelt. Accordingly, consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply. Additionally, the quantity under this water right should be reduced to reflect present needs, beneficial use and in no event should the quantity exceed 5/8 per acre. The quantity element should be reduced to reflect the actual irrigated acres.

Place of Use Should be: The total acres under this water right should be reduced to actual irrigated acres. The quantity element should be reduced accordingly.

Second Amended Objections are attached hereto and should be filed in the referenced subcases as proposed.

MEMORANDUM IN SUPPORT

On December 11, 2009 the Special Master issued *Orders on Motions for Summary Judgment and Order Setting Status Conference ("SJ Order")* on the Ground Water Districts', City of Pocatello's, Upper Users¹, and the Surface Water Coalition's² *Motions for Summary Judgment*. In that *SJ Order* the Special Master found that "none of the 37 subcases should be considered settled in this Order." (SJ Order at 14)."

¹ Fremont Madison Irrigation District, United Canal Company, and Blackfoot Irrigation District.

² A & B Irrigation District, AFRD#2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company.

On November 3, 2010 the Judge Wildman issued his *Decision on Rehearing* in the A&B Delivery Call Case. In that decision, Judge Wildman re-affirmed his prior decision and determined that the Director must be convinced that the senior user does not need his full decreed amount by clear and convincing evidence (*Decision on Rehearing* at 7-12) and that any contest to the quantity element should occur in the SRBA. (Id. at 15).

Given this ruling, it is necessary for the Ground Water Districts to amend their objections in these subcases to not just request an administrative condition, but to contest the actual quantity and place of use elements of the water rights in order to preserve the ability to present evidence in the SRBA to contest those elements.

In the SRBA there is a presumption by the Director that the quantity of water recommended is the amount needed for flood irrigation, however, the use of water under these water rights has been reduced in recent years due to more efficient irrigation methods and the amount of water needed to raise crops is not properly reflected in the proposed recommendations. The process used by IDWR in making its recommendations for the quantity element of a claim has been explained by former IDWR Director, and then Adjudication Bureau Chief, David R. Tuthill, Jr.:

In this, and similar, subcases where the water right holder (1) is presently irrigating by sprinkler or similar method, but (2) the right which the water right holder is claiming was previously for an irrigation diversion rate of greater than one miners inch per are (0.02 cfs) for gravity irrigation, and (3) the water right holder has claimed the higher quantity in the SRBA, then IDWR will recommend a reasonable diversion rate for gravity irrigation to provide sufficient water should the water right holder choose in the future to convert back to a gravity irrigation system. Accordingly, the recommended quantity does not constitute the quantity which the water right holder is presently placing to actual beneficial use.

Affidavit of David R. Tuthill, Jr. dated August 10, 1999, ¶ 3, filed in In Re SRBA Case No. 39576, Subcase No. 36-00035E (emphasis in original).

A. Amendment of Pleadings to Be Freely Given

Idaho Rule of Civil Procedure 15(a) provides that leave of the court to amend a pleading “*shall be freely given when justice so requires.*” (emphasis added). The SRBA Court acknowledges that “Rule 15(a) establishes a rather lenient standard for amending pleadings.” *Order Granting Motion to Amend Objection*, SRBA Subcase 37-154C, et al. p. 4 (October 10, 2008). The burden is on the party opposing the amendment to show why a court should not grant leave to amend a complaint. *Clark v. Olsen*, 110 Idaho 323, 326, 715 P.2d 993, 996 (1986). Although an objection in the SRBA is not a “complaint” in the same way as in other civil cases, the objection does provide the avenue for a third party or claimant to question the Director’s recommendation of a water right claim. Once an objection is filed to the Director’s Report, that water right becomes a “subcase” and is then “at issue.” The purpose of I.R.C.P. 15(a) is “[f]irst to allow the best chance for each claim to be determined on its merits, rather than on some procedural technicality; and, second, to relegate pleadings to the limited role of providing parties with notice of the nature of the pleader’s claim and to the facts that have been called into question. Issue formulation is to be left to the discovery process and pleadings are not to be viewed as carrying the burden of fact revelation or of controlling the trial phase of the action.” *Id.*

It is within the District Court’s discretion to allow a party to amend its complaint, and the rules favor liberal grants of leave to amend a party’s complaint. See, *Christensen v. Christensen*, 133 Idaho 866, 871, 993 P.2d 1197, 1202 (1999). In the SRBA, Special Master Bilyeu allowed objections to be amended when the amendment related to the elements of the water right because conditions relating to that element may have a valid

basis and in fact, allowed an amendment seeking to add a remark relating to water quality, even though quality is not an element of a water right administered by IDWR. *Order Granting Motion to Amend Objections*, SRBA Subcase 37-154C et. al. pp. 8-9 (October 10, 2008).

In the SRBA, in an effort to assist the parties in defining the issues and to standardize the practice, the SRBA District Court provides standard forms for objection to the Director's recommendation of a particular water right claim. As has often been said and practiced in the SRBA, an objection to one element of a water right puts the entire water right "at issue" because at the very early stages it is difficult to fully determine all the elements that may ultimately need to be revised in order to address a party's objection to the recommendation.

In these subcases, the Ground Water Districts in good faith timely objected to the Director's Reports and subsequently amended the objections. Based upon the very recent instruction in the *Decision on Rehearing* in the A & B Delivery Call Case the Ground Water Districts seek to amend their objections in order to put directly at issue the quantity and place of use elements in these water rights. The quantity and place of use elements on these water rights are already "at issue" because of the current pending objections by the City of Pocatello on water right nos. 1-4, 1-10 and 1-209 which go directly to the quantity and place of use elements as well as the claimant's own objections in 1-6 where American Falls Reservoir District No. 2 is requesting additional acres. Furthermore, the Ground Water Districts' prior objects raised issues to the quantity and place of use elements. In addition, only limited discovery has been conducted in these subcases and they have not yet been set for trial; a scheduling conference is set for January 6, 2011.

Allowing the Ground Water Districts' proposed amended objections does not prejudice any party but rather aids the courts and the parties by clarifying the matters that are directly at issue in these subcases.

B. There is No Prejudice to the Parties Because There Has Been Little Discovery And There is Ample Time to Respond and Prepare for Trial

The SJ Order was issued on December 11, 2009. As mentioned previously, a scheduling conference scheduled for January 6, 2011. There are no deadlines in these subcases. Thus, there is no prejudice to the parties. Given the fact that one of the major goals of the SRBA Court is to properly consider and decree water rights within the Snake River Basin, allowing these amended objections will allow the parties to fully understand and litigate the elements of the water rights. Allowing the Amended Objections is in keeping with the SRBA Court's purpose as well with the interests of justice, will allow the parties to litigate the merits of these water right claims and does not improperly limit the SRBA's authority to consider all elements of the water right claims.

C. SRBA Court Has the Ultimate Authority to Review the Director's Report and Issue the Decree on All Elements of the Water Right, Whether or Not the Water Right, or Specific Element is "Objected" to.

The amended objections further define and clarify the issues and should be allowed, especially considering the fact that even without an objection, the SRBA Court has the authority to review the Director's recommendations and can change the elements of the water right if the Court determines it is necessary. As has been "long accepted" by the Courts of Idaho, "water rights adjudications present unique circumstances, often requiring departure from established rules of procedure." *In Re: SRBA Case No. 39576, State v. United States* 128 Idaho 246, 254, 912 P.2d 614, 622 (1995). Hence, special procedural rules were adopted by the Legislature and the SRBA District Court to govern

the proceedings. In that case, one of the questions answered by the Supreme Court was whether or not the “unobjected” to portion of a Director’s Report could be decreed without any review of the SRBA District Court. The Supreme Court held that the district court retains the “inherent power to apply law to facts and render a decision” and found that “[s]tripping the district court of the ability to review the contents of the Director’s report and apply law to the facts as established in that report is an unconstitutional intrusion into the province of the judicial department.” Id. at 259, 912 P.2d at 627.

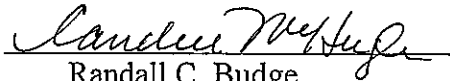
That being the case, it is certainly within the SRBA Court’s authority to review other, non-objected to elements in a contested subcase. It also follows, that parties to the subcase can present argument and evidence on other non-objected to elements in a contested subcase in order to fully develop the record before the Court who then can freely review the entire recommendation. Yet, in order to assist the court and parties in these subcases and to more clearly refine the objections, the Ground Water Districts have filed their motion for leave to amend the objections, along with amended objections and request that the court allow the amended objections to be filed.

CONCLUSION

When one considers I.R.C.P. 15(a)’s standard that amendments to pleadings should be freely given, with the SRBA’s confirmed authority to review all portions of a Director’s Report, the Ground Water Districts’ *Motion to File Second Amended Objections* should be granted and the Second Amended Objections attached hereto should be filed with the Court.

Respectfully submitted this 29th day of November, 2010.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

By: 
Randall C. Budge

Candice M. McHugh
ATTORNEY FOR GROUND WATER DISTRICTS

CERTIFICATE OF MAILING

I hereby certify that on this 29th day of November, 2010 a true and correct copy of the **MOTION TO FILE SECOND AMENDED OBJECTIONS AND MEMORANDUM IN SUPPORT** was served by email to those with email addresses and U.S. Mail, postage pre-paid and addressed to the following:


Candice M. McHugh

	Original	Via Federal Express
Clerk of the SRBA Court 253 Third Avenue North PO Box 2707 Twin Falls, ID 83302-2707		
Natural Resources Division Chief State of Idaho Attorney General's Office PO Box 44449 Boise, ID 83711-4449		IDWR Repository PO Box 83720 Boise, ID 83720-0098
United States Department of Justice Environment & Natural Resources Div 550 West Fort Street MSC 033 Boise, ID 83724 david.gehlert@usdoj.gov		Barker, Rosholt & Simpson LLP 113 Main Ave W, Suite 303 PO Box 485 Twin Falls, ID 83303-0485 jks@idahowaters.com tlr@idahowaters.com
Josephine Beeman 409 W Jefferson St Boise, ID 83702 jo.beeman@beemanlaw.com		Sarah A. Klahn White & Jankowski LLP Kittredge Building 511 16 th St, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com
Roger D. Ling 615 H St PO Box 396 Rupert, ID 83350-0396 rdl@idlawfirm.com		A. Dean Tranmer City of Pocatello PO Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us
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. Thomas Arkoosh 301 Main St PO Box 32 Gooding, ID 83330 alo@cableone.net		W. Kent Fletcher 1200 Overland Ave PO Box 248 Burley, ID 83318 wkf@pmt.org

**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

)
)
)
)
)
)

A. Subcase 1-4
(Insert water right number)
**SECOND AMENDED
STANDARD FORM 1
OBJECTION**

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Aberdeen-American Falls Ground Water District, Bingham
Ground Water District, Bonneville-Jefferson Ground Water
District, Carey-Valley Ground Water District, Jefferson Clark
Ground Water District, Madison Ground Water District, Magic
Valley Ground Water District and North Snake Ground Water
District (collectively "Ground Water Districts") acting for and on
behalf of their members

Address: c/o Lynn Tominaga
Executive Director of IGWA
P.O. Box 2624
Boise, ID 83701-2624

Telephone: (208) 381-0294

Name & Address of Attorney:

Randall C. Budge
Candice M. McHugh
T.J. Budge
Racine Olson Nye Budge & Bailey, Chtd.
101 South Capitol Boulevard, Suite 208
Boise, ID 83702
Telephone: 208-395-0011

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Twin Falls Canal Company

Address: PO Box 326, Twin Falls, ID 83303-0326

**D. I object to the following elements as recommended in the Director's Report.
(Please check the appropriate box(es)).**

1. ☐ Name and Address Should be:
2. ☒ Source Should be: A condition should be added to reflect that for conjunctive administration this water right is a flood and available only during high-flow periods.
3. ☒ Quantity Should be: A condition should be added to reflect that for conjunctive administration the quantity of water available to supply this right has historically been limited to the period of high flows resulting from snowmelt. Accordingly, consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply. Additionally, the quantity under this water right should be reduced to reflect present needs, beneficial use and in no event should the quantity exceed 5/8 per acre. The quantity element should be reduced to reflect the actual irrigated acres.
4. ☐ Priority Date Should be
5. ☐ Point(s) of Diversion Should be:
6. ☐ Instream Flow Description Should be:
7. ☐ Purpose(s) of Use Should be:
8. ☒ Period of Year Should be: The season of use should be limited to the high-flow period only, ending in late June or early July. Consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply.
9. ☒ Place of Use Should be: The total acres under this water right should be reduced to actual irrigated acres. The quantity element should be reduced accordingly.
10. ☒ Other Conditions Should be: A condition should be recommended by the Director of IDWR to comply with the historic Water District 1 administration, delivery and accounting of this water right and the storage reservoirs in Water District 01.

In addition, conditions should be added as follows:

- a) Conditions should be inserted to limit this right to water available below Blackfoot, except when upstream storage has filled.
- b) Conditions reflecting that for administrative purposes consideration will be given to the history and seasonal availability of water for diversion which may reduce the quantity element of the water right.
- c) A condition should be added that this water right is not entitled to make a delivery call against junior priority ground water rights. Alternatively, conditions that limit the season of use, priority date, and identifies the source as flood flows from snow melt should be included in times of shortage, for conjunctive administration purposes.
- d) A condition should be added clarifying that the quantity element of this water right is not a guaranteed amount but is an authorized maximum that can be diverted if available and used beneficially.

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): Water District 01 watermaster delivery records show that these water rights are only available during high run-off early in the irrigation season in June or early July and are not available during the full irrigation season. Groundwater users do not impact the amount of water available under these water rights because they are primarily dependent on spring run-off. To the extent that the quantity of water under these water rights has been limited to only a few days or weeks during the early run-off period, conditions should be included in order to not enlarge the element. Because these water rights have only ever had a limited use depending on the water year and the amount of water from high run-off periods, they should be limited or conditioned. In further support of these objections, please see Ground Water Districts' Motion for Summary Judgment and Memorandum In Support of Motion for Summary Judgment on filed in this matter for further explanation.

The quantity and place of use elements of these water rights do not reflect actual beneficial use, exceed the amount of water needed for efficient irrigation purposes and do not reflect current irrigation practices or the amount of acres.

This water right should include conditions that provide for it to be administered in the manner that Water District 01 has delivered this water right for the past 30 years. The current condition will alter the historic administration and will cause injury to junior storage space holders and jeopardize the amount or cost of water made available for mitigation purposes.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

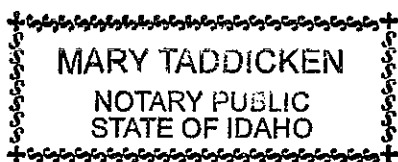
Candice M. McHugh, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

Candice McHugh
(Attorney signing in representative capacity)

Subscribed and sworn to before me on this 29 day of November, 2010.



Mary Taddicken
Notary Public for Idaho
Residing at: Boise
My Commission Expires: 9-12-13

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2010, the above and foregoing document(s), was served by emailing to those with email addressed, placing a copy in the U.S. Mail, postage prepaid and addressed to the following:


Candice M. McHugh

Original	Via Federal Express
Clerk of the SRBA Court 253 Third Avenue North PO Box 2707 Twin Falls, ID 83302-2707	
Natural Resources Division Chief State of Idaho Attorney General's Office PO Box 44449 Boise, ID 83711-4449	IDWR Repository PO Box 83720 Boise, ID 83720-0098
United States Department of Justice Environment & Natural Resources Div 550 West Fort Street MSC 033 Boise, ID 83724 david.gehlert@usdoj.gov	Barker, Rosholt & Simpson LLP 113 Main Ave W, Suite 303 PO Box 485 Twin Falls, ID 83303-0485 jks@idahowaters.com tlr@idahowaters.com
Josephine Beeman 409 W Jefferson St Boise, ID 83702 jo.beeman@beemanlaw.com	Sarah A. Klahn White & Jankowski LLP Kittredge Building 511 16 th St, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com
Roger D. Ling 615 H St PO Box 396 Rupert, ID 83350-0396 rdl@idlawfirm.com	A. Dean Tranmer City of Pocatello PO Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us
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. Thomas Arkoosh 301 Main St PO Box 32 Gooding, ID 83330 alo@cableone.net	W. Kent Fletcher 1200 Overland Ave PO Box 248 Burley, ID 83318 wkf@pmt.org

**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

) **A. Subcase 1-6**
)
)
)
)
)
)

(Insert water right number)

**STANDARD FORM 1
THIRD AMENDED
OBJECTION**

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Aberdeen-American Falls Ground Water District, Bingham
Ground Water District, Bonneville-Jefferson Ground Water
District, Carey-Valley Ground Water District, Jefferson Clark
Ground Water District, Madison Ground Water District, Magic
Valley Ground Water District and North Snake Ground Water
District (collectively "Ground Water Districts") acting for and on
behalf of their members

Address: c/o Lynn Tominaga
Executive Director of IGWA
P.O. Box 2624
Boise, ID 83701-2624

Telephone: (208) 381-0294

Name & Address of Attorney:

Randall C. Budge
Candice M. McHugh
T.J. Budge
Racine Olson Nye Budge & Bailey, Chtd.
101 South Capitol Boulevard, Suite 208
Boise, ID 83702
Telephone: 208-395-0011

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: American Falls Reservoir District #2

Address: 112 S. Apple Street, Shoshone, ID 83352

**D. I object to the following elements as recommended in the Director's Report.
(Please check the appropriate box(es)).**

1. ☐ Name and Address Should be:
2. ☒ Source Should be: A condition should be added to reflect that for conjunctive administration this water right is a flood right and available only during high-flow periods.
3. ☒ Quantity Should be: A condition should be added to reflect that for conjunctive administration the quantity of water available to supply this right has historically been limited to the period of high flows resulting from snowmelt. Accordingly, consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply. Additionally, the quantity under this water right should be reduced to reflect present needs, beneficial use and in no event should the quantity exceed 5/8 per acre. The quantity element should be reduced to reflect the actual irrigated acres.
4. ☐ Priority Date Should be.
5. ☐ Point(s) of Diversion Should be:
6. ☐ Instream Flow Description Should be:
7. ☐ Purpose(s) of Use Should be:
8. ☒ Period of Year Should be: The season of use should be limited to the high-flow period only, ending in late June or early July. Consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply.
9. ☒ Place of Use Should be: The total acres under this water right should be reduced to actual irrigated acres. The quantity element should be reduced accordingly.
10. ☒ Other Conditions Should be: The current condition recommended by the Director of IDWR is confusing and should be reworded in order to comply with the historic Water District 1 administration, delivery and accounting of this water right and the storage reservoirs in Water District 01. As currently recommended, the administration of water right 01-6 would distribute water to AFRD2 inconsistent with the distribution of this

right for the last 30 years by allowing AFRD2 to count previously stored water as natural flow as long as the reservoir fills by or after April 30.

In addition, conditions should be added as follows:

- a) Conditions should be inserted to limit this right to water available below Blackfoot, except when upstream storage has filled.
- b) Conditions reflecting that for administrative purposes consideration will be given to the history and seasonal availability of water for diversion which may reduce the quantity element of the water right.
- c) A condition should be added that this water right is not entitled to make a delivery call against junior priority ground water rights. Alternatively, conditions that limit the season of use, priority date, and identifies the source as flood flows from snow melt should be included in times of shortage, for conjunctive administration purposes.
- d) A condition should be added clarifying that the quantity element of this water right is not a guaranteed amount but is an authorized maximum that can be diverted if available and used beneficially.

11. I object because:

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): Water District 01 watermaster delivery records show that these water rights are only available during high run-off early in the irrigation season in June or early July and are not available during the full irrigation season. Groundwater users do not impact the amount of water available under these water rights because they are primarily dependent on spring run-off. To the extent that the quantity of water under these water rights has been limited to only a few days or weeks during the early run-off period, conditions should be included in order to not enlarge the element. Because these water rights have only ever had a limited use depending on the water year and the amount of water from high run-off periods, they should be limited or conditioned. In further support of these objections, please see Ground Water Districts' Motion for Summary Judgment and Memorandum In Support of Motion for Summary Judgment on filed in this matter for further explanation.

The quantity and place of use elements of these water rights do not reflect actual beneficial use, exceed the amount of water needed for efficient irrigation purposes and do not reflect current irrigation practices or the amount of acres.

This water right should include conditions that provide for it to be administered in the manner that Water District 01 has delivered this water right for the past 30 years. The current condition will alter the historic administration and will cause injury to junior storage space holders and jeopardize the amount or cost of water made available for mitigation purposes.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

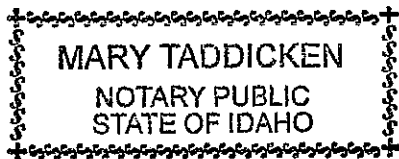
Candice M. McHugh _____, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

Candice McHugh
(Attorney signing in representative capacity)

Subscribed and sworn to before me on this 29th day of Nov., 2010.



Mary Taddicken
Notary Public for Idaho
Residing at: Boise
My Commission Expires: 9-12-13

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2010, the above and foregoing document(s), was served by emailing to those with email addressed, 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 PO Box 2707 Twin Falls, ID 83302-2707	Original	Via Federal Express
Natural Resources Division Chief State of Idaho Attorney General's Office PO Box 44449 Boise, ID 83711-4449		IDWR Repository PO Box 83720 Boise, ID 83720-0098
United States Department of Justice Environment & Natural Resources Div 550 West Fort Street MSC 033 Boise, ID 83724 david.gehlert@usdoj.gov		Barker, Rosholt & Simpson LLP 113 Main Ave W, Suite 303 PO Box 485 Twin Falls, ID 83303-0485 jks@idahowaters.com tlr@idahowaters.com
Josephine Beeman 409 W Jefferson St Boise, ID 83702 jo.beeman@beemanlaw.com		Sarah A. Klahn White & Jankowski LLP Kittredge Building 511 16 th St, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com
Roger D. Ling 615 H St PO Box 396 Rupert, ID 83350-0396 rdl@idlawfirm.com		A. Dean Tranmer City of Pocatello PO Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us
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. Thomas Arkoosh 301 Main St PO Box 32 Gooding, ID 83330 alo@cableone.net		W. Kent Fletcher 1200 Overland Ave PO Box 248 Burley, ID 83318 wkf@pmt.org

**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

)
)
)
)
)
)

A. Subcase 1-10

(Insert water right number)

**SECOND AMENDED
STANDARD FORM 1
OBJECTION**

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Aberdeen-American Falls Ground Water District, Bingham
Ground Water District, Bonneville-Jefferson Ground Water
District, Carey-Valley Ground Water District, Jefferson Clark
Ground Water District, Madison Ground Water District, Magic
Valley Ground Water District and North Snake Ground Water
District (collectively "Ground Water Districts") acting for and on
behalf of their members

Address: c/o Lynn Tominaga
Executive Director of IGWA
P.O. Box 2624
Boise, ID 83701-2624

Telephone: (208) 381-0294

Name & Address of Attorney:

Randall C. Budge
Candice M. McHugh
T.J. Budge
Racine Olson Nye Budge & Bailey, Chtd.
101 South Capitol Boulevard, Suite 208
Boise, ID 83702
Telephone: 208-395-0011

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Twin Falls Canal Company

Address: PO Box 326, Twin Falls, ID 83303-0326

**D. I object to the following elements as recommended in the Director's Report.
(Please check the appropriate box(es)).**

1. ☐ Name and Address Should be:
2. ☒ Source Should be: A condition should be added to reflect that for conjunctive administration this water right is a flood and available only during high-flow periods.
3. ☒ Quantity Should be: A condition should be added to reflect that for conjunctive administration the quantity of water available to supply this right has historically been limited to the period of high flows resulting from snowmelt. Accordingly, consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply. Additionally, the quantity under this water right should be reduced to reflect present needs, beneficial use and in no event should the quantity exceed 5/8 per acre. The quantity element should be reduced to reflect the actual irrigated acres.
4. ☐ Priority Date Should be
5. ☐ Point(s) of Diversion Should be:
6. ☐ Instream Flow Description Should be:
7. ☐ Purpose(s) of Use Should be:
8. ☒ Period of Year Should be: The season of use should be limited to the high-flow period only, ending in late June or early July. Consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply.
9. ☒ Place of Use Should be: The total acres under this water right should be reduced to actual irrigated acres. The quantity element should be reduced accordingly.
10. ☒ Other Conditions Should be: A condition should be recommended by the Director of IDWR to comply with the historic Water District 1 administration, delivery and accounting of this water right and the storage reservoirs in Water District 01.

In addition, conditions should be added as follows:

- a) Conditions should be inserted to limit this right to water available below Blackfoot, except when upstream storage has filled.
- b) Conditions reflecting that for administrative purposes consideration will be given to the history and seasonal availability of water for diversion which may reduce the quantity element of the water right.
- c) A condition should be added that this water right is not entitled to make a delivery call against junior priority ground water rights. Alternatively, conditions that limit the season of use, priority date, and identifies the source as flood flows from snow melt should be included in times of shortage, for conjunctive administration purposes.
- d) A condition should be added clarifying that the quantity element of this water right is not a guaranteed amount but is an authorized maximum that can be diverted if available and used beneficially.

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): Water District 01 watermaster delivery records show that these water rights are only available during high run-off early in the irrigation season in June or early July and are not available during the full irrigation season. Groundwater users do not impact the amount of water available under these water rights because they are primarily dependent on spring run-off. To the extent that the quantity of water under these water rights has been limited to only a few days or weeks during the early run-off period, conditions should be included in order to not enlarge the element. Because these water rights have only ever had a limited use depending on the water year and the amount of water from high run-off periods, they should be limited or conditioned. In further support of these objections, please see Ground Water Districts' Motion for Summary Judgment and Memorandum In Support of Motion for Summary Judgment on filed in this matter for further explanation.

The quantity and place of use elements of these water rights do not reflect actual beneficial use, exceed the amount of water needed for efficient irrigation purposes and do not reflect current irrigation practices or the amount of acres.

This water right should include conditions that provide for it to be administered in the manner that Water District 01 has delivered this water right for the past 30 years. The current condition will alter the historic administration and will cause injury to junior storage space holders and jeopardize the amount or cost of water made available for mitigation purposes.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

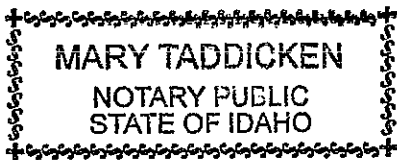
Candice M. McHugh, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

Candice McHugh
(Attorney signing in representative capacity)

Subscribed and sworn to before me on this 29th day of November, 2010.



Mary Taddicken
Notary Public for Idaho
Residing at: Boise
My Commission Expires: 9-12-13

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2010, the above and foregoing document(s), was served by emailing to those with email addressed, 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 PO Box 2707 Twin Falls, ID 83302-2707	Original	Via Federal Express
Natural Resources Division Chief State of Idaho Attorney General's Office PO Box 44449 Boise, ID 83711-4449		IDWR Repository PO Box 83720 Boise, ID 83720-0098
United States Department of Justice Environment & Natural Resources Div 550 West Fort Street MSC 033 Boise, ID 83724 david.gehlert@usdoj.gov		Barker, Rosholt & Simpson LLP 113 Main Ave W, Suite 303 PO Box 485 Twin Falls, ID 83303-0485 jks@idahowaters.com tlr@idahowaters.com
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C. Thomas Arkoosh 301 Main St PO Box 32 Gooding, ID 83330 alo@cableone.net		W. Kent Fletcher 1200 Overland Ave PO Box 248 Burley, ID 83318 wkf@pmt.org

**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

A. Subcase 1-209

(Insert water right number)

**SECOND AMENDED
STANDARD FORM 1
OBJECTION**

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Aberdeen-American Falls Ground Water District, Bingham
Ground Water District, Bonneville-Jefferson Ground Water
District, Carey-Valley Ground Water District, Jefferson Clark
Ground Water District, Madison Ground Water District, Magic
Valley Ground Water District and North Snake Ground Water
District (collectively "Ground Water Districts") acting for and on
behalf of their members

Address: c/o Lynn Tominaga
Executive Director of IGWA
P.O. Box 2624
Boise, ID 83701-2624

Telephone: (208) 381-0294

Name & Address of Attorney:

Randall C. Budge
Candice M. McHugh
T.J. Budge
Racine Olson Nye Budge & Bailey, Chtd.
101 South Capitol Boulevard, Suite 208
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Telephone: 208-395-0011

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6. ☐ Instream Flow Description Should be:
7. ☐ Purpose(s) of Use Should be:
8. ☒ Period of Year Should be: The season of use should be limited to the high-flow period only, ending in late June or early July. Consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply.
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F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

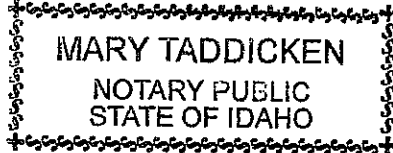
Candice M. McHugh _____, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

Candice McHugh
(Attorney signing in representative capacity)

Subscribed and sworn to before me on this 29th day of November, 2010.



Mary Taddicken
Notary Public for Idaho
Residing at: Boise
My Commission Expires: 9-12-13

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2010, the above and foregoing document(s), was served by emailing to those with email addressed, 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 PO Box 2707 Twin Falls, ID 83302-2707	Original	Via Federal Express
Natural Resources Division Chief State of Idaho Attorney General's Office PO Box 44449 Boise, ID 83711-4449		IDWR Repository PO Box 83720 Boise, ID 83720-0098
United States Department of Justice Environment & Natural Resources Div 550 West Fort Street MSC 033 Boise, ID 83724 david.gehlert@usdoj.gov		Barker, Rosholt & Simpson LLP 113 Main Ave W, Suite 303 PO Box 485 Twin Falls, ID 83303-0485 jks@idahowaters.com tlr@idahowaters.com
Josephine Beeman 409 W Jefferson St Boise, ID 83702 jo.beeman@beemanlaw.com		Sarah A. Klahn White & Jankowski LLP Kittredge Building 511 16 th St, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com
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