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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Minidoka Irrigation District

**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. 01-00217, 01-00218,
) 01-04024, and 01-04025
) (Minidoka Power Right)

) Subcase Nos. 01-2068 and 01-4054
) (Palisades Power Rights)

) Fee Category L.4: \$101.00

) **SURFACE WATER COALITION'S**
) **AMENDED JOINT NOTICE OF**
) **APPEAL**

TO: THE RESPONDENTS, THE UNITED STATES OF AMERICA, BUREAU OF RECLAMATION, THE STATE OF IDAHO, AND THE PARTIES' COUNSEL OF RECORD IDENTIFIED ON THE CERTIFICATE OF SERVICE; AND THE CLERK OF THE ABOVE ENTITLED DISTRICT COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively hereinafter referred to as the "Surface Water Coalition", "Coalition", or "SWC"), and Falls Irrigation District, jointly appeal against the above named respondents to the Idaho Supreme Court from the district court's final *Memorandum Decision and Order on Challenge*, filed February 11, 2011, the Honorable Eric J. Wildman presiding.

2. The above named appellants have a right to appeal to the Idaho Supreme Court, and the order described in paragraph 1 is an appealable order pursuant to Rule 11(a)(3), I.A.R.

3. The appellants' preliminary statement of issues they intend to assert on appeal, which under I.A.R. 17, does not prevent the appellants from asserting other issues is as follows:

- a. Whether the district court erred in granting judgment as a matter of law on a "remark" for water right 01-217 agreed to by the United States and the State of Idaho despite the Director's recommendations for the water right and genuine issues of material fact.
- b. Whether the Court erred in holding that the State of Idaho was not bound by the terms of the *Eagle Decree* despite the State's Watermaster, Henry C. Eagle, being a named defendant in the case represented by the State of Idaho Attorney General.
- c. Whether the district court erred in concluding that the United States was free to subordinate its water rights for power purposes at its Minidoka and Palisades Reclamation Dams in breach of the Power and Subordination provisions contained and agreed to between the United States and its Minidoka and Palisades Reclamation Project landowners, through repayment contracts with organizations

formed to represent the landowner-waterusers, which organizations include members of the Surface Water Coalition.

4. No order has been entered sealing any portion of the record.

5. The Appellants do not request that a copy of the transcripts of proceedings before the Special Master, and of the oral argument on the *Notice of Challenge* held before the district court on December 21, 2010 be made a part of the record on appeal. A copy of the transcript of the November 12, 2009 Hearing on Motions for Summary Judgment, before Special Master Dolan, was previously prepared by the Court and should be included in the record on appeal.

~~Appellants possess copies of the transcripts of proceedings before the Special Master, and a copy of the transcript of the argument before the district court may be obtained from Linda Ledbetter, 570 Rim View Drive, Twin Falls, Idaho 83301, phone number (208) 734-3099.~~

6. The Appellants request that the clerk's record, including the exhibits, be copied and sent to the Supreme Court.

7. The Appellants also request that the following documents be made part of the record:

- a. United States' Motion for Summary Judgment (8/17/09)
- b. United States' Memo in Support of Summary Judgment (8/17/09)
- c. Affidavit of David Jarvis (8/17/09)
- d. State of Idaho Motion for Partial Summary Judgment (8/17/09)
- e. State of Idaho Memo in Support of Motion for Partial Summary Judgment (8/17/09)
- f. Affidavit of Anthony Olenichak (8/17/09)
- g. Affidavit of David Stanish (8/17/09)

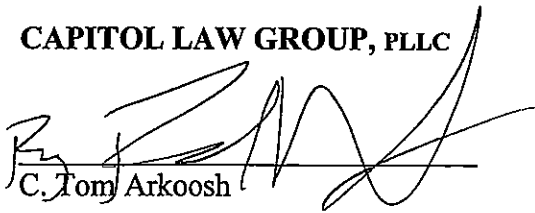
- h. Surface Water Coalition and Idaho Power Company's Joint Memorandum in Opposition to State of Idaho's and United States' Motions for Summary Judgment (11/03/09)
- i. Affidavit of Randy Bingham (11/03/09)
- j. Affidavit of W. Kent Fletcher (11/03/09)
- k. Affidavit of Terrell Sorensen (11/03/09)
- l. Affidavit of Dan Temple (11/03/09)
- m. Affidavit of Travis L. Thompson (11/03/09)
- n. Affidavit of Lyle Swank (11/09/09)
- o. United States' Reply Memorandum (11/10/09)
- p. State of Idaho's Reply (11/10/09)
- q. Second Affidavit of David Stanish (11/10/09)
- r. Order Granting Motions for Summary Judgment and Special Master Report and Partial Recommendation (3/25/10)
- s. SWC Joint Motion to Alter or Amend (5/28/10)
- t. State of Idaho's Response (5/28/10)
- u. SWC Reply in Support of Motion to Alter or Amend (6/22/10)
- v. Order Denying Joint Motion to Alter or Amend (7/29/10)
- w. SWC Notice of Challenge (8/12/10)
- x. SWC Joint Opening Brief on Challenge (10/7/10)
- y. United States' Response on Challenge (10/28/10)
- z. State of Idaho's Response on Challenge (10/28/10)
- aa. SWC Rebuttal Brief on Challenge (11/12/10)

7. I certify:

- a. That a copy of this notice of appeal has been served on the reporter.
- b. That the estimated fee required for the preparation of the reporter's transcript has been paid.
- c. That the estimated fee for preparation of the clerk's record has been paid.
- d. That the appellant filing fee has been paid.
- e. That service has been made upon all parties to be served pursuant to Rule 20.

DATED this 14th day of March, 2011.

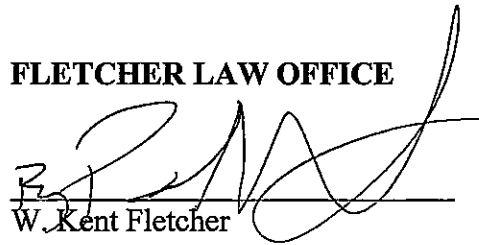
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District #2*

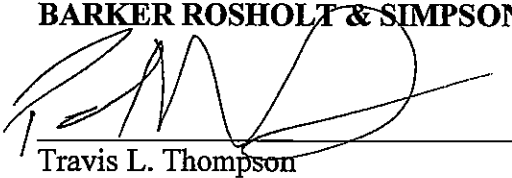
FLETCHER LAW OFFICE



W. Kent Fletcher

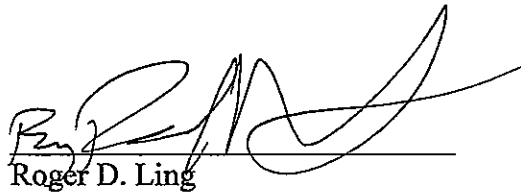
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CERTIFICATE OF SERVICE

I hereby certify that on the ^{15th} 14th day of March, 2011, I served a true and correct copy of the foregoing document on the person(s) listed below by the method indicated:

Clerk of the SRBA Court
253 Third Ave. North
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Twin Falls, Idaho 83303-2707

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☐ Facsimile
☐ Email

Natural Resources Division Chief
State of Idaho
Attorney General's Office
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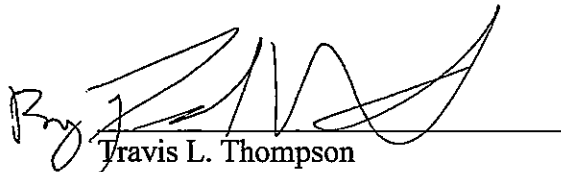
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