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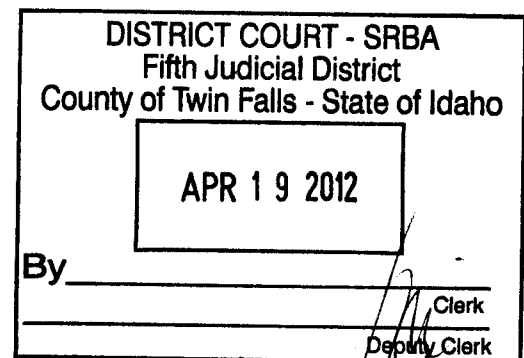
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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

Subcase Nos. Attachment A

**SURFACE WATER
COALITION'S JOINT MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

COME NOW, 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, (hereinafter collectively referred to as the “Surface Water Coalition” or “SWC”), by and through their undersigned counsel of record, and hereby move this Court for an order granting partial summary judgment pursuant to Idaho Rule of Civil Procedure 56(c).

The Palisades Contracts established an administrative scheme for the Upper Snake River Reservoir System that is binding on all parties to those agreements. Furthermore, these provisions are binding on all junior water users, who, in developing their water rights, took the system as they found it. Since these provisions are necessary for the administrative of water rights 01-2064 and 01-2068, they should be identified on the partial decrees. Accordingly, the SWC proposes the following remarks to be included on the water rights:

The delivery of water to this right is subject to the procedures described in the United States Bureau of Reclamation spaceholder contracts, as amended, in connection with the Palisades project and the Minidoka project, which are attached as Exhibits A, B (Provisions 19 and 20), C (Provision 19a), E (Provisions 21 and 22), and F (Provision 8a) to the Burley Irrigation Dist. v. Eagle, Supplemental Decree (Idaho 5th Jud. Dist., July 10, 1968) and Aberdeen-Springfield Canal Company v. Eagle, Supplemental Decree (Idaho 7th Jud. Dist., March 12, 1969).

In the alternative, the Special Master could recommend that the following remark to be included on water rights 01-2064 and 01-2068:

The delivery of water to this right is subject to the procedures described in the United States Bureau of Reclamation spaceholder contracts, as amended in connection with the Palisades project and Minidoka project (attached hereto).

Attached to this Motion, as Exhibit 1, is a copy of the proposed attachment to the partial decrees referenced in the second proposed remark.

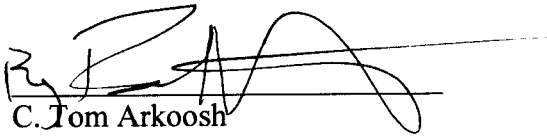
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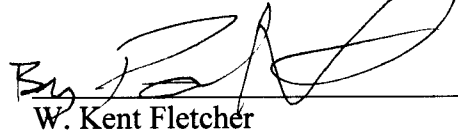
DATED this 19th day of April, 2012.

CAPITOL LAW GROUP PLLC


C. Tom Arkoosh

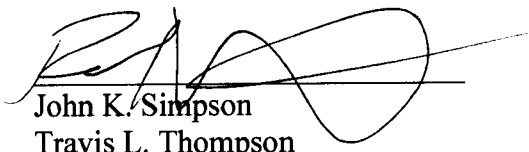
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Burley Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls Canal Company*

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April, 2012, I served a true and correct copy of the foregoing **JOINT MOTION FOR PARTIAL SUMMARY JUDGMENT** on the person(s) listed below, by U.S. Mail, and electronic mail if available:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

U.S. Bureau of Reclamation
Regional Director, PN Region
1150 N. Curtis Rd., Ste. 100
Boise, ID 83706-1234

Jerry R. Rigby
P.O. Box 250
Rexburg, ID 83440-0250

Adam T. Devoe
410 17th St., 22nd Floor
Denver, CO 80202

Randall C. Budge
Candice M. McHugh
P.O. Box 1391
Pocatello, ID 83201

U.S. Department of Justice
Division of Env. & Natural Resources
550 W. Fort Street, MSC 033
Boise, ID 83706-1234

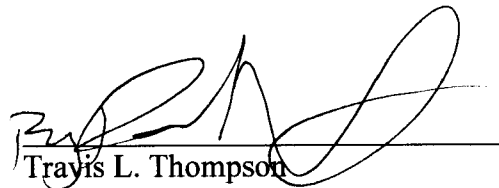
Idaho Attorney General's Office
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P.O. Box 44449
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Idaho Falls, ID 83405

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Boise, ID 83702

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P.O. Box 70
Boise, Idaho 83707

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



Travis L. Thompson

ATTACHMENT A

01-2064
01-2064A
01-2064B
01-2064C
01-2064D
01-2064E
01-2064F
01-2064L
01-10042
01-10042A
01-10042B
01-10053A
01-10190

01-2068
01-2068D
01-2068E
01-2068F
01-2068M
01-2068Y
01-10043
01-10043A
01-10043E
01-10191
01-10389

Exhibit 1

EXHIBIT 1

SWC Joint Motion for Partial Summary Judgment

(Proposed Attachment to Partial Decrees for Water Rights 01-2064 and 01-2068)

Winter Water Savings:

Saving of Winter Water; Special Storage Right:

17. (a) The Company is hereby recognized as having this right to divert at Milner Dam for domestic and livestock uses during the months of November through March of each storage season not to exceed 126,000 acre-feet, but within this limitation:

If, taking account of all storable water, whether stored or not, Palisades and American Falls reservoirs fail to fill during the storage season in question, any water diverted by the Company during that storage season in excess of 126,000 acre-feet (but not to exceed the amount of deficiency to fill) will be charged as of the end of the storage season against the Company's allotment of American Falls storage,

and, beginning with the date announced by the Secretary as to the time when Palisades will be ready for operation, the Company shall confine its diversions from the Snake River during the months of November through March of each storage season to the rights here recognized.

(b) After Palisades Reservoir is in operation, the Company may, to the extent that it curtails its diversions during the months of November through March of any storage season below the rights defined in (a) of this article, store in that season an equivalent amount of saved water in either American Falls or Palisades Reservoir space available to it, the amount not to exceed 126,000 acre-feet in any storage season. This right to store water shall be prior in time over the storage rights held by the United States for American Falls Reservoir (the latter having a priority dated March 20, 1921), or any storage rights held by the United State or the Company that are junior to the American Falls rights. The Company hereby consents to the granting of special storage rights with a like priority to other water users who, directly or indirectly, contract to curtail storage season diversions for not less than 150 consecutive days out of each storage season within these maxima as to total special storage rights:

(1) For water users organizations and water users diverting above American Falls Dam – 135,000 acre-feet.

(2) For water users organizations and water users diverting between American Falls and Milner Dam – 8,000 acre feet, exclusive of the special storage rights described in (c) of this article.

(c) The Company also hereby consents to permitting the Twin Falls Canal Company to store, in either American Falls or Palisades Reservoir, during the months of November through March of each storage season under a priority like that provided in (b) above, water that would otherwise accrue to it within these rights:

The rights of the Twin Falls Canal Company to divert at Milner Dam for domestic and livestock uses during those months as follows:

150,000 acre-feet, but within this limitation:

If, taking account of all storable water, whether stored or not, Palisades and American Falls reservoirs fail to fill during any storage season, any water diverted by the Twin Falls Canal Company during that storage season in excess of 150,000 acre-feet (but not to exceed the amount of deficiency in fill) will be charged as of the end of that storage season against the Twin Falls Canal Company's allotment of American Falls storage.

This definition of rights of the Twin Falls Canal Company as a limitation on its rights, it is understood, need not be made operative until the first year in which that company exercises the special storage provision to which consent is here given.

Distribution of Rights to Share in Palisades Capacity Made Available to the Company

18. Under the provisions of articles 16 and 17, the Company will be entitled to stored water accruing to a certain active capacity in Palisades Reservoir, which rights are in addition to those now appurtenant to lands owned by its stockholders which are included within the American Falls Reservoir District or within the Hillsdale Irrigation District. Subject to the payment of all proper assessments and levies and compliances with other conditions validly imposed under law, the rights to shares in stored water so to become available and the obligation related thereto shall be apportioned equally and ratably among all the outstanding shares of the Company's stock, it being understood for clarity that thirteen and eight tenths per cent (13.8%) of such rights is appurtenant to shares of Company stock which, as of the date of this contract, are appurtenant to lands within the boundaries of the Hillsdale Irrigation District and eighty-six and two tenths percent (86.2%) of such rights is appurtenant to shares of Company stock which, as of the date of this contract, are appurtenant to lands within the boundaries of American Falls Reservoir District.

Exchange Between Jackson Lake and American Falls Reservoir

Permanent Exchange of American Falls and Jackson Lake Storage Rights

19. The United States, as of the date of this contract, operates and maintains for the benefit of lands in the lower valley served by the South Side Pumping and Gravity divisions of the Minidoka Project and by the Company the following capacities, respectively, in Jackson Lake Reservoir below elevation 6752:

Minidoka Project.....	325,810 acre-feet
Company.....	<u>10,000</u> acre-feet
Total.....	335,810 acre-feet

Beginning October 1, 1952, there will be operated and maintained in Jackson Lake Reservoir, in lieu of the latter rights, the upper valley exchanged space as defined in article 20, and there will be made available to the Company fifty-nine hundredths per cent (0.59%) of the active capacity of American Falls Reservoir (being 10,000 acre-feet in terms of a total active capacity of 1,700,000 acre-feet), this comprising part of the lower valley exchanged space as defined in article 20.

Definition of Upper Valley Exchanged Space: Guarantee in Event Lower Valley Exchanged Space Fails to Fill

20. It is anticipated that various upper valley holders of storage rights in American Falls Reservoir will have acquired in lieu of those rights seventy-six and seven tenths per cent (76.7%) of the total active capacity in Jackson Lake Reservoir as of October 1, 1952, these rights in Jackson Lake Reservoir being hereinafter called the upper valley exchanged space; and nineteen and seventy-five hundredths per cent (19.75%) of active space in American Falls Reservoir will be held for the South Side Pumping and Gravity diversions of the Minidoka Project (nineteen and sixteen hundredths per cent (19.16%)) and the Company (fifty-nine hundredths per cent (0.59%)), these rights being hereinafter called the lower valley exchanged space. The seventy-six and seven tenths per cent (76.7%) in Jackson Lake and the nineteen and seventy-five hundredths per cent (19.75%) in American Falls shall, so long as the respective total active capacities are not less than 847,000 and 1,700,000 acre-feet, be treated as the equivalent of 335,810 acre-feet. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacities are other than above stated. Beginning with the 1952-1953 storage season, there shall be a determination, at the end of each storage season in which the lower valley exchanged space fails to fill, taking carryover storage into account, (1) of the amount by which the American Falls storable inflow to which the lower valley exchanged space was entitled during that season failed to fill that space; and (2) of the amount, if any, by which the Jackson Lake storable inflow to which the upper valley exchanged space was entitled during that season failed to fill that exchanged space. If the amount under (1) exceeds that under (2), there shall be credited to the lower valley exchanged space and charged to the upper valley exchanged space an

amount of stored water equal to the difference, but not in excess of the amount required to fill the lower valley exchanged space as of the end of that storage season. The determinations under this article shall be made by a committee of three comprising the state watermaster of District No. 36, a representative to be selected jointly by the Burley and Minidoka irrigation districts and the Company, and the officer of the United States in charge of the Minidoka Project.

Temporary Upstream Storage

Temporary Storage and Exchange of Water: Release of Jackson Lake and Palisades Water for Power Production

19.(a) It is the purpose of the United States and the water users having storage rights in the reservoir system (including the District) to have the reservoir system so operated as to effect the greatest practicable conservation of water. In keeping with this purpose, the endeavor will be to hold stored water in reservoir system space that is farthest upstream. Water in storage in any of the reservoirs of the system may, however, when the watermaster and the Advisory Committee determine this to be in the interest of water conservation, be held temporarily in unoccupied space in any other reservoir of the system. And the District hereby consents to the making, with the approval of the watermaster, of annual exchanges of stored water among the various reservoirs of the system. No such temporary holding of water or such annual exchanges shall, however, deprive any entity of water accruing to space held for its benefit.

Minidoka Irrigation District Exchange/Storage

Redefinition of Jackson Lake Storage Rights of Minidoka Irrigation District and Water Users Coming within its Jurisdiction; and Annual Exchanges thereof

21.(a) The United States will continue to operate and maintain the existing Jackson Lake Reservoir and, beginning October 1, 1958, will make available to the District stored water accruing to 42.49% of the active capacity of that reservoir below elevation 6752, within the limits and on the terms and conditions provided in this contract. This percentage shall, so long as the reservoir has a total active capacity of 847,000 acre-feet, be treated as the equivalent of one hundred eighty-six thousand thirty (186,030) acre-feet of active capacity below elevation 6752. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

(b) After the District's irrigation season commences in any calendar year, as determined by the Watermaster, the District shall have the right to affect annual exchanges of water out of stored water that is exchangeable, not to exceed the extent of the District's use of Jackson Lake stored water in that year, if requested by written notice within 60 days after the commencement of the District's irrigation season in that calendar year. Any such exchange shall be made out of water stored to the credit of upper valley water users in American Falls Reservoir or out of any water in that reservoir that is available for exchange. To the extent that there is water to effect such exchanges, they shall be effected without charge for transmission losses between Jackson Lake and American Falls Reservoir. The requests for such exchanges made by the District shall be directed in writing to the officer in charge of the Minidoka Project and the Watermaster and those officers shall forthwith initiate and carry through the exchanges within the limits herein stated.

Holdover Rights & Rights to Release of Water & Related Matters

22.(a) Beginning with the 1958-1959 storage season, the United States will operate Jackson Lake Reservoir so as to hold over, in any space available in the reservoir, from one irrigation season to the next for use in that next season, stored water to which any holder of space in the reservoir is entitled, but the total amount of stored water which will be held for the use of any holder of space during any irrigation season shall not exceed the space available to that holder. The United States shall, however, in its operation of the reservoir, have the right, after consultation with the Advisory Committee, to lower the water surface elevation in Jackson Lake in each storage season in order to avoid damage to the dam during winter weather and to provide incidental flood control, but, except in cases of operation and maintenance emergencies, such release of water shall not result in loss of storable water in that storage season. If losses do result these shall be prorated equally over all space in the reservoir and shall be charged against stored water including that, if any carried over from prior irrigation seasons. Determination of the relative rights of the various holders of space in the reservoir to reservoir inflow during each storage season shall, however, continue to be on the basis of the difference in priorities for the storage of water held by the United States for the capacity below elevation 6752 and those held for the capacity above that elevation. Reservoir permits issued by the state of Wyoming for the capacity below elevation 6752 are as follows:

<u>Permit No.</u>	<u>Capacity in acre-feet 2/</u>	<u>Priority</u>
R 894	299,000	August 23, 1906
R 1903	392,990	August 18, 1910
R 2185	438,000	July 24, 1911

The capacity below elevation 6752 shall continue to be operated, as it has been historically, on a pooled or vertical basis as to priorities with respect to storable inflow.

(b) Stored water accruing to the rights in Jackson Lake Reservoir as defined in this article shall be available for physical delivery to the District during any irrigation season within these limitations:

(1) Except in cases of emergency, deliveries shall be limited to periods when the District's natural flow rights and rights to water stored in Palisades and American Falls Reservoirs downstream from Jackson Lake Reservoir are not sufficient to meet the District's irrigation water requirements, but this provision, except for limitations in the District's and in the landowners' reservoir capacity, does not preclude the District from designating for purposes of allocation, on paper, reservoirs from which the District and its water users are to receive the water, or from designating the reservoir in which the carry-over water will be stored at the end of a particular irrigation season.

(2) Deliveries shall be limited at any time to the amount which can be delivered by means of the District's proportionate share of the outlet capacity, taking into account the requirement of passing prior natural flow rights through the reservoir and the physical limitations of the existing outlet works.

(c) All carry-over of stored water in Jackson Lake Reservoir, whether held under individual water right applications coming within the jurisdiction of the District or in the name of the District itself, shall be restricted to the carry-over rights as defined in this article as being held for the District and to those held under water right applications to lands within the jurisdiction of the District, and other carry-over or drop-down rights or claims of rights are hereby abandoned.

(d) Rights under the interim exchange arrangement which was consummated in 1955 and extended from year to year since that date are terminated as of October 1, 1958, but any stored water then carried over in the District's share of the lower valley exchanged space, as defined in that interim arrangement, will be carried as a credit to the District's Jackson Lake capacity as defined in this article as of the beginning of the 1958-1959 storage season.

Delivery of Water/Measurement/Storage Provisions

Delivery of Water; Measurement and Losses: Return Flow

8.(a) To the extent that the water is pumped from wells and from surface streams that flow into American Falls Reservoir, actual measurements at the well heads and at the discharge lines of other pumping plants delivering water for the said Michaud Division shall be made during each irrigation season. All water provided through the Michaud Division system for the irrigation of lands of the Michaud Division of the Fort Hall Indian Reservation from any and all sources in any irrigation season shall be accounted for as water stored for the Indian Bureau as provided in article 4 and charged thereto, except:

(1) Surface waters that may be available under flood water rights that may be obtained with a priority of not earlier than one year before the priority held for Palisades Reservoir; and

(2) Not to exceed an average annual amount of 22,400 acre-feet, as prescribed by Section 3(b)(1) of said act of August 31, 1954 (Supra) calculated over a ten-year period including the irrigation season just ended and the preceding nine irrigation seasons, from ground water pumped any place in the Michaud Division system. Until a full ten-year period is available, the average shall be for the years of project operation.

Delivery of water to lands of the said Michaud Division that as above provided in this article is chargeable to stored water for any irrigation season, shall be limited, however, to the quantities of stored water available as provided in article 4, and the supply of water available from all sources through the Michaud Division system shall be limited to the irrigation of not to exceed 21,000 acres of land. Lands within the outer boundaries of the Michaud Division, but which do not share in the water supply provided by this agreement, are hereby excluded from any of the benefits of this agreement, of the act of August 31, 1954, and of the Michaud Division system.