

RECEIVED

FEB 25 2013

DEPARTMENT OF
WATER RESOURCES

C. Tom Arkoosh, ISB #2253
ARKOOSH EIGUREN PLLC
802 W. Bannock Street, Suite 900
P.O. Box 2900
Boise, Idaho 83701
Telephone: (208) 343-5105
Facsimile: (208) 343-5456

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548

Attorneys for Minidoka Irrigation District

*Attorneys for American Falls Reservoir
District #2*

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*Attorneys for A & B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company*

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. 01-2068 and 1-2068Y

**SURFACE WATER
COALITION'S POST-TRIAL
BRIEF**

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,” “Coalition, or “SWC”), by and through counsel of record and pursuant to the Court’s *Order on Post-Trial Briefing* and *Supplemental Order on Post-Trial Briefing*, hereby submit the following post-trial brief.

POST-TRIAL BRIEF

The City of Pocatello (“Pocatello”) lodged its post-trial brief on February 1, 2013. In a heading, Pocatello states that its water right claim 01-2068Y and objection to water right claim 01-2068 “is not subject to administration in order to be recognized by the SRBA Court.” *Poc. Br.* at 2. The Coalition does not understand this statement or the point Pocatello seeks to make.

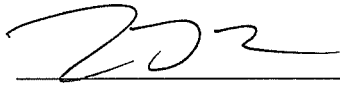
Pocatello goes on to rely upon the State’s arguments in Basin-Wide Issue 17 to apparently claim that “beneficial use” is irrelevant for purposes of the adjudication of its claim 01-2068Y and water right claim 01-2068. Again, this argument makes no sense. Idaho law specifically requires a water right to identify a “purpose” or “beneficial use” as one of its decreed elements. *See* I.C. § 42-1409(1)(g); 42-1411(2)(f). Moreover, “beneficial use” is required to perfect a storage water right appropriation in Idaho. *See U.S. v. Pioneer Irr. Dist.*, 144 Idaho 106 (2007). Pocatello has provided no legal authority or citation to the record presented at trial to refute this requirement. Instead Pocatello has vaguely referred to “idaho code,” “idaho supreme court decisions,” and the “idaho constitution.” *Poc. Br.* at 2. These vague references provide no assistance to the Court or the parties, hence Pocatello’s argument, whatever it is, should be rejected. Moreover, to the extent Pocatello relies upon the State of Idaho’s briefing in Basin-Wide 17, the Coalition adopts and incorporates its own briefing in that proceeding as well (*SWC Opening Brief*, filed 12/21/2012; *SWC Response Brief*, filed 01/11/13; and *SWC Reply Brief*, filed 1/25/13).

Finally, Pocatello states that it “will include additional legal citation in its reply brief.”

Poc. Br. at 2. Pocatello misreads the Court’s *Order on Post-Trial Briefing*. See also, *Supplemental Order on Post-Trial Briefing*. There is no provision for a “reply brief.” Pocatello was required to lodge its post-trial brief on February 1, 2013. The remaining parties were then required to lodge their post-trial briefs on February 22, 2013. Since there is no further briefing allowed Pocatello cannot lodge a “reply brief” at some future date.

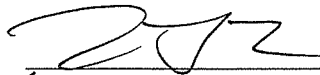
Dated this 22nd day of February, 2013.

ARKOOSH EIGUREN PLLC


C. Tom Arkoosh

*Attorneys for American Falls
Reservoir District #2*

FLETCHER LAW OFFICE


W. Kent Fletcher

Attorneys for Minidoka Irrigation District

BARKER ROSHOLT & SIMPSON LLP


John K. Simpson
Travis L. Thompson
Paul L. Arrington

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls Canal Company*

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2013, I served a true and correct copy of the foregoing **SURFACE WATER COALITION'S POST-TRIAL BRIEF** 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

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

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

Josephine P. Beeman
409 W. Jefferson St.
Boise, ID 83702

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

Craig Hobdey
P.O. Box 176
Gooding, ID 83330-0176

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

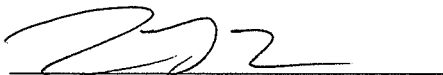
Adam T. Devoe
410 17th St., 22nd Floor
Denver, CO 80202

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

James C. Tucker
Idaho Power Company
P.O. Box 70
Boise, Idaho 83707

Roger Ling
P.O. Box 623
Rupert, ID 83350-0623

Michael C. Orr
State of Idaho, Office of Attorney General
P.O. Box 44449
Boise, ID 83711-04449


Travis L. Thompson