

FEB 23 2009

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE SECOND)
MITIGATION PLAN OF THE NORTH) **SURFACE WATER COALITION'S**
SNAKE AND MAGIC VALLEY GROUND) **PROTEST TO GROUND WATER**
WATER DISTRICTS TO COMPENSATE) **DISTRICTS' MITIGATION PLAN**
SNAKE RIVER FARMS)
)
(Water District Nos. 130 and 140))
)
_____)

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 "Surface Water Coalition"), by and through their attorneys of record,
BARKER ROSHOLT & SIMPSON LLP, FLETCHER LAW OFFICE, and CAPITOL LAW

SURFACE WATER COALITION'S PROTEST

FOR OFFICE USE ONLY

Fee: ~~25.00~~ 175.00
Receipt No. 5030706
Receipt by: [Signature]
Date Received: 3/23/09

GROUP PLLC, hereby file this protest to the approval of the above-referenced mitigation plan filed by the Magic Valley Ground Water District and North Snake Ground Water District (“Ground Water Districts”) on December 18, 2008. The initial bases for the Coalition’s protest are as follows:

1. The Ground Water Districts’ mitigation plan violates Idaho law in that it seeks to have IDWR order and approve “money” mitigation in lieu of providing water to a senior water right holder (in this case Clear Springs Foods, Inc.). IDWR has no such legal authority

2. The approval of such a plan would result in an unconstitutional private taking of a senior water right by non-domestic groundwater pumpers for irrigation uses.

3. The approval of such a plan by an administrative agency would effect a taking of a senior water right holder’s property right interest in violation of the separation of powers doctrine contained in the United States and Idaho constitutions.

4. The approval of such a plan sets an unlawful precedent whereby junior water right holders would be given a preference to “water” ahead of senior water right holders, provided they are willing and able to pay an arbitrary amount of “money” to the senior.

5. The approval of such a plan would convert hearings on the mitigation plan to an annual litigation of the issues of lost profit, lost business opportunity and other factors related to the damages sustained by a senior water right holder resulting from the taking of water by junior ground water pumpers, issues that are outside the scope and jurisdiction of the administrative powers of the Department.

6. For such other and further reasons as may be discovered or set forth at the hearing on this matter.

DATED this 23rd day of February 2009.

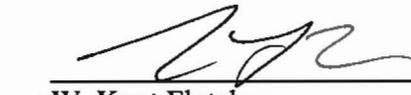
BARKER ROSHOLT & SIMPSON LLP



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North Side Canal Company, and Milner Irrigation District*

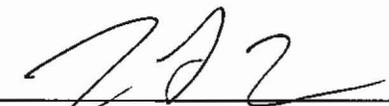
FLETCHER LAW OFFICE



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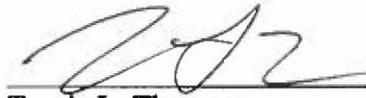
C. Thomas Arkoosh

Attorneys for American Falls Reservoir District #2

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2009, I served a true and correct copy of the foregoing *Surface Water Coalition's Protest to Ground Water Districts' Mitigation Plan*, by depositing same in the United States mail, postage prepaid, addressed to the following:

Randall C. Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83204-1391


Travis L. Thompson