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Department of Water Resources

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RUPERT, IDAHO 83350-0396

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY OR FOR THE BENEFIT OF 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.	**REQUEST FOR APPROVAL OF MITIGATION PLAN OF A & B IRRIGATION DISTRICT**

COMES NOW A & B Irrigation District, an irrigation district duly formed under the laws of the State of Idaho, of P. O. Box 675, 414 11th Street, Rupert, Idaho 83350, by and through its attorney of record, and submits the following proposed Mitigation Plan, to-wit:

1. That pursuant to a letter dated April 22, 2005, addressed to the United States of America, acting through the USDI Bureau of Land Management, from Cindy Yenter, Watermaster of Water District 130, which letter ultimately was delivered to the Bureau of

Reclamation and A & B Irrigation District on April 29, 2005, A & B Irrigation District, the equitable owner of the following water rights was advised that it would be required to provide replacement water as mitigation for depletions to flows of the Snake River caused by its ground water pumping pursuant to the Director's Order issued April 19, 2005, in the above-entitled matter. The water rights listed in said letter are:

36-15127B for the irrigation of 1,751.5 acres

36-15193B for the irrigation of 18.9 acres

36-15194B for the irrigation of 152.4 acres

36-15195B for the irrigation of 135.6 acres

36-15196B for the irrigation of 4.7 acres

Total Acres: 2,063.1

2. Said water rights have priorities of April 1, 1984, April 1, 1965, April 1, 1968, April 1, 1978, and April 1, 1981, respectively, subject to an appeal of that priority date and the date of subordination now on file with the Idaho Supreme Court.

3. The 2,063.1 acres covered by the above water rights are entitled to divert four (4) acre-feet per acre each year, or a total of 8,252.4 acre-feet, and the annual consumptive use of water in the irrigation of said 2,063.1 acres is 1.6 acre-feet per acre.

4. A & B Irrigation District presently holds an equitable interest in Water Right No. 01-02064 for the storage of 47,593 acre-feet of water in American Falls Reservoir when the active capacity of American Falls Reservoir is 1.7 million acre-feet, and an equitable interest in Water Right No. 01-02068 for the storage of 90,800 acre-feet in Palisades Reservoir,

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which reservoirs are owned and operated by the United States of America, Department of Interior, Bureau of Reclamation.

5. A & B Irrigation District is the equitable owner of Water Right No. 36-02080, which entitles A & B Irrigation District to divert 1100 cfs from the Eastern Snake Plain Aquifer for the irrigation of 66,683.2 acres, which water right is held in the name of the United States of America, Department of Interior, Bureau of Reclamation.

6. The above water rights are used for the irrigation of lands within A & B Irrigation District pursuant to a contract with the United States of America, Department of Interior, Bureau of Reclamation whereby A & B Irrigation District operates and maintains said project, and is in the process of paying for its landowners the construction costs of the project, including its pro rata share of storage facility construction and all of the operation and maintenance costs of that portion of the project transferred to A & B Irrigation District.

7. A & B Irrigation District has converted 1,377.8 acres irrigated under the above ground water rights to irrigation from surface water using storage water under the storage rights above referred to, which conversion fully mitigates any alleged injury to senior surface water rights or senior ground water rights, as such conversion has reduced the consumptive use of ground water on said acres at the rate of 1.6 acre-feet per acre, for a total savings in consumptive use of ground water in the amount of 2,204.48 acre-feet.

8. The average annual surface water diversion use on the above 1,377.8 acres within A & B Irrigation District that have been converted from ground water to surface water is 3.7 acre-feet per acre per annum. This conversion therefore provides a minimum of 2.1 acre-feet

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per acre, or a total of 2,893.38 acre-feet, of incidental recharge which would not have occurred in the absence of such conversion of ground water use to surface water use, which incidental recharge is sufficient to offset the depletive effect of ground water withdrawal from the Eastern Snake Plain Aquifer for the irrigation of the balance of 685.3 acres subject to the delivery call, which would consumptively use only 1,096.48 acre-feet per annum at the consumptive rate of 1.6 acre-feet per acre.

9. A & B Irrigation District further operates and maintains a system-wide drainage system whereby it recaptures irrigation waste water by its drainage system, which water is used to irrigate more than 2,063.1 acres originally entitled to use ground water from the Eastern Snake Plain Aquifer for irrigation of said lands.

10. The use of irrigation waste water and drain water within A & B Irrigation District provides a replacement water for lands that would otherwise be irrigated with ground water under the water rights of A & B Irrigation District, and such replacement water use is sufficient to offset any depletive effect of ground water withdrawal under the above-described ground water rights at such time and place as is necessary to satisfy the rights of diversion from the ground water source, the Eastern Snake Plain Aquifer. The issue as to whether or not irrigation waste water and drainage water recaptured by A & B Irrigation District is to be treated as ground water or surface water is an issue before the Idaho Supreme Court, waiting decision.

11. Any attempt to curtail the use of recaptured irrigation waste and drain water for the irrigation of lands that otherwise are entitled to be irrigated with ground water from the Eastern Snake Plain Aquifer would be futile, as there is no method by which the use of such

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irrigation return flow and waste water can be curtailed, and if such water is not used for irrigation and as a replacement water source, more of the water will be lost by evaporation than will be used consumptively in irrigation with said water. Therefore, the senior-priority surface water rights, including the surface water rights of A & B Irrigation District, because of physical and hydrologic reasons, cannot be satisfied within a reasonable time or at any time by a call for immediately curtailing diversions of irrigation waste water and drain water that would result in waste of the water resource.

12. Curtailment in the irrigation of lands with ground water under the ground water rights held by A & B Irrigation District, excluding those lands above described whereby a substitute or alternative source of surface water was provided, has occurred for 437.2 acres. These acres are located in the following areas, to-wit:

TOWNSHIP 8 SOUTH, RANGE 25 EAST OF THE BOISE MERIDIAN

Section 22: Tract A – 125.3 acres
Section 21: Tract A – 44 acres

TOWNSHIP 8 SOUTH, RANGE 24 EAST OF THE BOISE MERIDIAN

Section 15: Tract D – 61 acres
Section 3: Tracts G/J – 5 acres
Sections 29/32: Tract D – 17.2 acres
TOWNSHIP 8 SOUTH, RANGE 23 EAST OF THE BOISE MERIDIAN

Sections 11/12/13/14: Tract M – 5 acres
Section 13: Tract C – 5 acres
Sections 4/5: Tract G – 10 acres
Section 26: Tract D – 1 acre

TOWNSHIP 9 SOUTH, RANGE 21 EAST OF THE BOISE MERIDIAN

Section 5: SE¼ - 160 acres

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Curtailment of the irrigation of these lands has occurred for the first time in 2005, or was a continuation of a curtailment that was accomplished and part of the A & B Irrigation District mitigation plan submitted in response to the Rangen Curtailment Order in 2004, and such curtailment is further mitigation in mitigation plans, past or future.

13. The above mitigation plan submitted by A & B Irrigation District, who is the holder of the junior-priority ground water rights above described, identifies actions and measures to prevent holders of senior-priority surface water rights or ground water rights from suffering material injury, regardless of the definition, caused by the diversion and use of water by A & B Irrigation District of ground water within an area having a common ground water supply.

WHEREFORE, A & B Irrigation District requests that the Director fully consider the above mitigation plan and that the mitigation plan be approved in regard to the delivery call above referred to and made in this proceedings by surface water users. It is further requested that in the event more specific information is necessary or desired, A & B Irrigation District requests the opportunity to provide such additional information, including identification of specific location of acres being irrigated with recaptured irrigation waste and drain water and the specific location of the lands formerly irrigated with ground water which are now being provided an alternative source of water from surface water sources.

Respectfully submitted this 12th day of May, 2005.

LING, ROBINSON & WALKER

By: _____
Roger D. Ling
Attorneys for A & B Irrigation District

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CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of May, 2005, served copies of the foregoing *Request for Approval of Mitigation Plan of A & B Irrigation District* upon the following parties by the method indicated below:

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