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DEPARTMENT OF
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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE REQUEST FOR ADMINISTRATION IN WATER DISTRICT 120 AND THE REQUEST FOR DELIVERY OF WATER TO SENIOR SURFACE WATER RIGHTS BY 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	**SURFACE WATER COALITION'S MOTION FOR CLARIFICATION AND SUPPLEMENTAL INFORMATION CONCERNING RECORD**

This Motion for Clarification and Supplemental Information Concerning Record is filed on behalf 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 (hereinafter for the purpose of convenience collectively referred to as the "Surface Water Coalition" or "Coalition" or "SWC").

FACTS

The Coalition hand delivered a letter to the Director on January 14, 2005, requesting administration of junior ground water rights within Water District No. 120 in 2005. *See January 14, 2005 Letter to Director.*

On April 19, 2005, the Director issued an order in response to the Coalition's request for water right administration. This order was later amended on May 2, 2005 ("*May 2, 2005 Order*"). The Coalition and other parties have petitioned for the modification or amendment of the Director's *May 2, 2005 Order.*

On July 22, the Director issued a Scheduling Order, setting the matter for hearing commencing January30, 2006, and setting forth deadlines for disclosures and discovery.

The initial request for administration was handled by the Director as an informal proceeding pursuant to Procedure Rule 100, and a record was developed by the Director upon which the Director relied when issuing the *May 2, 2005 Order.*

The proceeding now before the Director is a formal proceeding pursuant to Procedure Rule 104. The Coalition is uncertain how matters considered by the Director in the informal proceeding will be considered by the Director when issuing a decision in the formal proceeding.

Procedure Rule 602 authorizes "official notice" of "any facts that could be judicially noticed in the courts of Idaho and of generally recognized technical or scientific facts with the agency's specialized knowledge" and requires notice to the parties of specific facts and

materials noticed and the source of the material noticed, including any agency staff memoranda and data.

Ultimately, the Director will be required to create a record of decision in the formal proceeding that, pursuant to Procedure Rule 650, can include "all staff memoranda or data submitted in connection with the consideration of the proceeding" and "matters officially noticed".

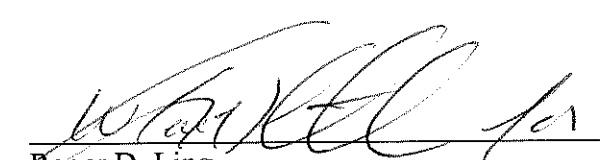
The Coalition is uncertain as to what materials, memoranda; "noticed matters" and other evidence in the record relied upon by the Director when issuing the *May 2, 2005 Order* will be part of the record in the formal proceeding. It is the belief of the Coalition, and will afford all parties greater due process and simplify discovery, if the Director discloses and itemizes those parts of the record relied upon by the Director in the informal proceeding that the Director also intends to consider in the formal proceeding.

REQUEST

The Coalition requests that the Director respond to this Motion and disclose and itemize all parts of the record relied upon by the Director in the informal proceeding that the Director intends to consider in this formal proceeding.

DATED this 12 day of August, 2005.

LING ROBINSON & WALKER



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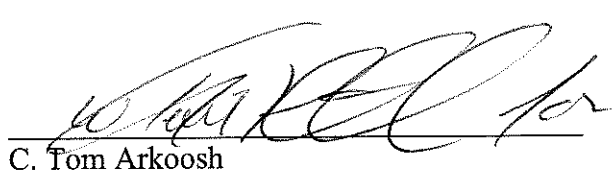

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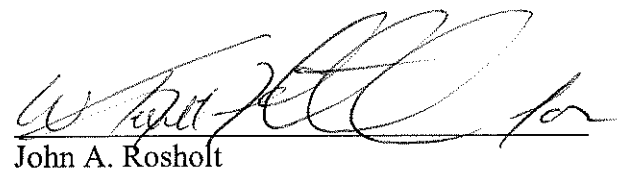

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CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of August, 2005, I served a true and correct copy of the foregoing *SURFACE WATER COALITION'S MOTION FOR CLARIFICATION AND SUPPLEMENTAL INFORMATION CONCERNING RECORD* on the following persons/entities, by the method indicated:

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