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DEPARTMENT OF
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BEFORE THE DIRECTOR
OF 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	**STIPULATED MOTION FOR ENTRANCE OF PROTECTIVE ORDER**

The parties hereto jointly move the Director ("Hearing Officer") of the Idaho Department of Water Resources, pursuant to Rule 26(c) of the Idaho Rules of Civil Procedure, and IDAPA

37.01.01.532 to enter the proposed Protective Order submitted herewith, attached hereto, and incorporated herein. The parties stipulate that good cause for this proposed Protective Order exists, as discovery in this action will entail review of confidential information. As this is a stipulated motion, no oral argument or hearing is requested.

DATED this 25th day of January, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of February, 2006, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

Josephine P. Beeman BEEMAN & ASSOCIATES, PC 409 West Jefferson Boise, ID 83702	X United States Mail, Postage Prepaid ___ E-mail X Via Facsimile ___ Hand Delivered
Scott L. Campbell MOFFATT THOMAS Post Office Box 829 Boise, ID 83701-0829	X United States Mail, Postage Prepaid ___ E-mail X Via Facsimile ___ Hand Delivered
Ronald D. Carlson Lewis Rounds IDAHO DEPARTMENT OF WATER RESOURCES Eastern Regional Office 900 North Skyline Drive, Suite A Idaho Falls, ID 83402-6105	X United States Mail, Postage Prepaid ___ E-mail ___ Via Facsimile ___ Hand Delivered
Kathleen M. Carr U.S. DEPARTMENT OF THE INTERIOR 960 Broadway, Suite 400 Boise, ID 83706	X United States Mail, Postage Prepaid ___ E-mail X Via Facsimile ___ Hand Delivered
Karl J. Dreher, Director Attn: Victoria Wigle, Administrative Assistant to Mr. Dreher IDAHO DEPARTMENT OF WATER RESOURCES Post Office Box 83720 Boise, ID 83720-0098	___ United States Mail, Postage Prepaid ___ E-mail ___ Via Facsimile X Hand Delivered
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Allen Merritt Cindy Yenter IDAHO DEPARTMENT OF WATER RESOURCES 1341 Fillmore Street, Suite 200 Twin Falls, ID 83301-3033	X United States Mail, Postage Prepaid ___ E-mail ___ Via Facsimile ___ Hand Delivered
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Michael C. Creamer

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BEFORE THE DIRECTOR
OF THE DEPARTMENT OF WATER RESOURCES
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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	**PROTECTIVE ORDER**

Based on the Stipulated Motion for Entrance of Protective Order, for good cause shown, and under the authority set forth in Rule 26(c) of the Idaho Rules of Civil Procedure, and IDAPA

37.01.01.532, Director ("Hearing Officer") of the Idaho Department of Water Resources ("Agency"), the Hearing Officer finds that entrance of a Protective Order is appropriate in this case.

IT IS THEREFORE ORDERED THAT:

1. This Protective Order ("Protective Order") governs the treatment of all information contained in documents, depositions, and deposition exhibits, interrogatory answers, responses to requests for admissions and other written, recorded, computerized electronic or graphic matter, copies, excepts or summaries of documents ("Discovery Material") produced by any party or non-party ("Producing Party") and all testimony taken at a hearing or other proceeding in the above-captioned matter ("Action").

2. Any Producing Party may designate as confidential any part or all of Discovery Material that it believes, in good faith, contains legally protectable and/ or otherwise personal or confidential information, including but not limited to trade secrets, non-public research, development, financial, marketing, customer, development, manufacturing or commercial or non-commercial information in accordance with Rule 26(c) of the Idaho Rules of Civil Procedure. All Discovery Material so designated shall be referred to in this Protective Order as "Confidential Discovery Material." As of the date hereof, all Confidential Discovery Material is listed in Exhibit A, attached hereto and incorporated herein as though set forth in full. This designation shall apply regardless of the form in which the Confidential Discovery Material is kept or maintained, and extends to any documents, including exhibits, copies, notes, abstracts, summaries, or analyses, to the extent that such documents reflect Confidential Discovery Material. All Confidential Discovery Material shall be handled in strict accordance with the terms of this Protective Order.

3. All Confidential Discovery Material in the form of physical objects or documents shall be designated by stamping or affixing the word "Confidential" on the face of the document and on each page or portion thereof.

4. Confidential Discovery Material that is designated "Confidential" may be disclosed or made available without written consent from the Producing Party ***only*** to the following persons:

a. The parties to this litigation, and agents of the parties to this litigation, *provided that* such agents execute the Undertaking prior to disclosure and a copy of such signed Undertaking is retained by counsel for the party making such a disclosure to agents;

b. Counsel for the respective parties to this litigation, including attorneys, paraprofessionals, and employees of such law firms;

c. Experts or consultants retained to assist counsel for the parties described in subparagraph 4(a), *provided that* such experts or consultants, and professional employees execute the Undertaking prior to disclosure and a copy of such signed Undertaking is retained by counsel for the party making such a disclosure to such expert(s) or consultant(s);

d. Any witness deposed in this Action, who shall be provided prior to or at the outset of his, hers, or its deposition with a copy of this Protective Order on the record at the deposition. In such instance, the witness shall be bound by the provisions of this Protective Order and shall be informed that he, she or it (and such person's counsel, if any), is bound by the terms of this Protective Order by virtue of this Order of the Agency;

e. Stenographers or court reporters who record testimony taken at any time or place in the course of this Action or persons operating video recording equipment of and at such testimony; and

f. The Agency, Agency personnel, counsel, and any other person designated by the Agency in this Action in the interest of justice, upon such terms as the Agency may deem proper.

5. Confidential Discovery Material shall be used only for the prosecution and/or defense of this Action, or negotiation of its settlement, and may be disclosed only under the circumstances and to the persons specifically provided for in this or subsequent Agency Orders, or with the prior written consent of the Producing Party.

6. Any party or person in possession of Confidential Discovery Material who receives a subpoena (or other process) from any person (including natural persons, corporations, partnerships, firms, governmental agencies, departments or bodies, boards or associations) who is not a party to this Order, which subpoena seeks production or other disclosure of such Confidential Discovery Material, shall promptly give written notice by facsimile to counsel for the party who produced or designated the materials as confidential identifying the materials sought and enclosing a copy of the subpoena or other process. The Producing Party may move against the subpoena or other process, or otherwise oppose entry of any order by a court of competent jurisdiction compelling production of the Confidential Discovery Material. If the Producing Party objects to or moves against the subpoena or other process, the person or party receiving the subpoena or other process shall not produce Confidential Discovery Material before the actual due date for compliance, and shall not object to or interfere with any effort by the Producing Party to seek a prompt judicial determination on the Producing Party's motion or objection before compliance is required.

7. The inadvertent failure to stamp a document, or a portion thereof, with the "Confidential" Designation in no way alters or waives the protected and confidential nature of the document otherwise deserving of such a designation and does not remove it form the scope of this Protective Order, *provided that* the Producing Party gives such notice in writing within thirty (30) days after becoming aware that the Confidential Information was not properly

designated. Such written notice shall identify with specificity the information or documents the Producing Party is then designating to be Confidential Information and promptly provide a replacement copy of such material with the appropriate "Confidential designation thereupon. Treatment of inadvertently produced confidential material in a manner inconsistent with this Protective Order prior to notice of such inadvertent production is not a breach of this Protective Order, but the parties shall take all reasonable steps to recover or retrieve any confidential materials if a designation permitted under this paragraph is made.

8. The Producing Party may, on the record of a deposition, or within fifteen (15) business days after receipt of the transcript(s) of such deposition, designate in good faith any portion or portions of the deposition as Confidential Discovery Material under the terms of this Protective Order. All copies of deposition transcripts that contain information or material designated as Confidential Discovery Material shall be prominently marked "Confidential" on the cover thereof and on each page that contains Confidential Discovery Material and, if filed with the Agency, the portions of such transcripts so designated shall be filed in accordance with the provisions of Paragraph 9 below.

9. Unless otherwise provided by applicable Agency rules, all documents and materials filed with the Agency containing or reflecting the contents of Confidential Discovery Information shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the case caption, a generic designation of the contents, the word "Confidential," and language in substantially the following form:

> By order dated [date], the enclosed [name of document], or a portion thereof, has been filed under seal and may not be examined without further Agency order.

No party or other person may have access to any sealed document from the files of the Agency without an order of the Agency. The "Hearing Officer's Copy" of a sealed document may be

opened by the presiding Hearing Officer, law clerks and other Agency personnel without further Order of the Agency. Any party filing documents and material with the Agency containing or reflecting the contents of Confidential Discovery Information shall also provide to the Clerk of the Agency a version of the filing with the Confidential Discovery Information redacted or, as to exhibits to a memorandum or brief, withdrawn.

10. Confidential Discovery Material may be offered into evidence at trial or at any Agency hearing in open hearing *provided that* the Producing Party is notified in advance of any such intended use of Confidential Discovery Material. The Producing Party may apply for an order that evidence be received *in camera* or under other less public circumstances to prevent unnecessary disclosure. In the event any party desires to offer any Confidential Discovery Material received from another party into evidence that is in any way altered, amended, or in any way modified, or intends to rely in any way upon any modified Confidential Discovery Material received from another party or the results of use of any modified Confidential Discovery Material received from another party, a condition precedent to such use shall be written notice to the Producing Party two weeks prior to hearing unless earlier required by other Order.

11. Nothing in this Protective Order shall be interpreted to prohibit or prevent the Producing Party from using or discussing its own Confidential Discovery Material in any way it sees fit to so use or discuss the material for any reason. Any such use or discussion of Confidential Discovery Material shall not be deemed a waiver of the terms of this Protective Order, unless the Producing Party utilizes the information in open hearing or in a pleading that is not filed under seal.

12. Disclosure of information protected by the attorney-client, work product or other applicable privilege or protection shall not constitute a waiver of any claim of privilege, and

failure to assert a privilege in this litigation as to one document or communication shall not be deemed to constitute a waiver of the privilege as to any other document or communication, even involving the same subject matter. A party that discovers that it has produced privileged or protected information shall request its return within thirty (30) days of the discovery of such production. The privileged or protected information, together with all copies thereof, shall be returned to the party claiming privilege within 5 business days after requested. Any motion challenging the privilege or protection, or otherwise referring to the document(s) at issue, shall be filed under seal.

13. The following procedures shall apply to any disputes arising from the designation of Discovery Materials as confidential pursuant to this Protective Order:

a. If a party in good faith disagrees with the Producing Party's confidential designation, that party shall forthwith inform counsel for the Producing Party in writing of that disagreement;

b. Upon written notification that a party disagrees with a confidential designation, counsel for the objecting party and the Producing Party will confer in a good faith effort to resolve the dispute without Agency intervention;

c. If the dispute is not resolved within fifteen (15) days of the Producing Party's receipt of the objecting party's written notification, the objecting party may invoke the Agency rules and procedures for raising discovery disputes. Unless otherwise provided by applicable law, the Producing Party shall bear the burden of proving that information has properly been designated as a Confidential Discovery Material; and

d. Until such time as any such judicial process has been initiated and resolved, all parties receiving Confidential Discovery Material shall abide by the designation.

14. Each document, material, or other thing, or portion thereof designated Confidential shall retain that designation and shall remain subject to the terms of this Protective Order until such time as the parties agree to the contrary or the Agency renders a decision that a

particular document, material, or other thing, or portion thereof is not subject to this Protective Order, and any and all proceedings or interlocutory appeals challenging such decision have been concluded.

15. Except as otherwise agreed in writing by the parties and all Agency personnel, within sixty (60) days after final resolution of this Action (including resolution of appeals or petitions for review), all Confidential Discovery Material supplied by a Producing Party and all copies thereof (including, without limitation, copies provided to testifying or consulting experts) shall, at the possessing party's choice, be returned to the Producing Party by whomever posses the same, including Agency personnel, or the party's counsel and the Agency's counsel shall certify to the Producing Party that all such materials in their possession, custody, or control have been destroyed. The burden of persuasion that Confidential Discovery Material is returned or destroyed is not on the Producing Party, but on the receiving party. This Protective Order shall survive the final termination of this Action with respect to any such Confidential Discovery Material, and shall be enforceable in law and equity as a contract between the parties.

16. This Protective Order shall become binding on the parties upon the Agency's entry of it. This Protective Order shall be binding upon any party joined in this litigation unless and until this Agency, pursuant to a request by a party or on its own accord, orders that the party is not subject to the terms of this Protective Order. This Protective Order shall be binding upon any non-party in this litigation who invokes its protection and authority, unless and until this Agency, pursuant to a request by a party or a non-party, or, on its own accord, orders that a party or non-party is not subject to the terms of this Protective Order.

17. Any time limit contemplated by this Protective Order may be extended by an agreement in writing, signed by counsel of record for all parties.

18. Because a violation of this Protective Order could cause irreparable injury to the Producing Party, and there may be no adequate remedy at law for such violation, a party shall have the right, in addition to any other remedies available at law or in equity, to seek to enjoin any other person, entity, or party from any intentional violation of this Protective Order.

19. The above-entitled matter, and all proceedings attendant thereto, are hereby stayed for a period of sixty (60) days from the date of this Order for purposes of allowing the parties to investigate settlement. Gooding County Case No. OC-05-600 shall be fully submitted and the Parties shall request the Court stay issuance of its Summary Judgment Order until conclusion of the negotiations herein contemplated.

DATED this ____ day of _____, 2006.

_____
Karl J. Dreher
Director, Idaho Department of Water Resources