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Attorneys for A&B Irrigation District

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE PETITION FOR) **DOCKET NO. 37-03-11-1**
DELIVERY CALL OF A&B IRRIGATION)
DISTRICT FOR THE DELIVERY OF) **A&B IRRIGATION DISTRICT'S**
GROUND WATER AND FOR THE) **MOTION TO STRIKE**
CREATION OF A GROUND WATER)
MANAGEMENT AREA)
_____)
)
)
)

COMES NOW, A & B Irrigation District ("A&B"), by and through its attorneys of record, and moves the Director for an order striking the City of Pocatello's *Motion for the Director to Consider City of Pocatello's Proposed Order on Remand*.

The Director issued his *Final Order Regarding the A&B Irrigation District Delivery Call* on June 30, 2009. On May 4, 2010, the District Court remanded the matter back to "the Director to apply the appropriate evidentiary standard to the existing record."

Memorandum Decision & Order on Petition for Judicial Review at 49. According to the Court, “No further evidence is required.” *Id.*

The record in this matter is closed. Any decision by the Director must be based on the record before the Director. Rule 650 of the Department’s Rules of Procedure describes the contents of the record. The rules provide for briefing before the Director. *See* Rules 720 & 730. Once the final decision has been issued by the Director, and an appeal has been filed to the District Court, the Rules do not allow for any additional briefing. Rule 740; *see also* I.C. § 67-5277 (“judicial review of disputed issues of fact must be confined to the agency record for judicial review as defined in this chapter”).

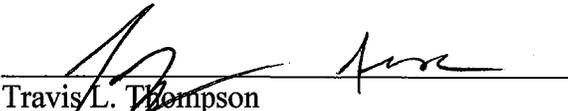
The District Court’s remand order was clear, the “Director” must apply the appropriate burdens and the “Director” must issue a further order. The District Court did not allow for additional evidence or briefing. *See supra* (“No further evidence is required”). Although fashioned as a “Proposed Order on Remand,” Pocatello’s motion and proposed order is really an attempt to provide the Director with additional argument contrary to Idaho’s Administrative Procedures Act, I.C. §67-5201 *et seq.* Pocatello further mischaracterizes the evidence and misstates the holdings of the District Court’s decision. Nothing in the APA statutes or rules authorizes this filing. Indeed, Pocatello cites no such authority in its briefing.

The Director has the record before him and can review it and issue a new order in compliance with the Court’s remand order. There is no rule or other authority allowing for additional briefing or argument from the parties. Accordingly, the Director should strike Pocatello’s motion and proposed order.

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DATED this 16th day of March, 2011.

BARKER ROSHOLT & SIMPSON LLP

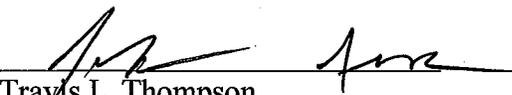


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CERTIFICATE OF MAILING

I hereby certify that on this 16th day of March, 2011, the above and foregoing, was sent to the following by U.S. Mail proper postage prepaid and by email for those with listed email addresses:

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