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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 FOR SUMMARY**
CREATION OF A GROUND WATER) **JUDGMENT**
MANAGEMENT AREA)
)
)
_____)

COMES NOW, A&B IRRIGATION DISTRICT ("A&B"), by and through its attorneys of record, pursuant to I.R.C.P. 56(c) and the Hearing Officer's September 22, 2008 *Order Approving Stipulation to Move Dispositive Motion Deadline*, and hereby submits this *Motion for Summary Judgment* in the above-entitled matter.

A&B submits there are no genuine issues of material fact concerning the issues covered by this motion. Through this motion, A&B seeks summary judgment that the Director erred as matter of law in responding to A&B's call in the January 29, 2008. First, the Director erroneously relied upon "pre-decree" information to: 1) find that A&B was limited to delivering 0.75 miner's inch per acre to all landowners on the project and therefore A&B has "sufficient water"; 2) infer a "water duty" contrary to A&B's decreed water right; and 3) assert the original siting, construction, and depth of A&B's points of diversion, or wells, was inadequate.

Next, the Director failed to apply the correct legal standards in responding to A&B's call as set forth by the Idaho Supreme Court in *AFRD #2 v. IDWR*, 143 Idaho 862 (2007). Consequently, the Director misapplied the proper presumptions and burdens to justify denying A&B's call.

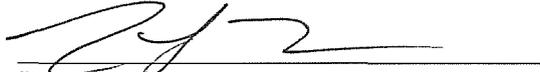
Finally, the Director's finding that A&B has not exceeded a "reasonable pumping level" is unsupported by the facts and information disclosed by the Department. Since the Director has failed to set a "reasonable pumping level" in the Eastern Snake Plain Aquifer and there is no factual information in the record to support the finding, it should be set aside as a matter of law.

A&B respectfully requests the Hearing Officer to grant its motion and declare the Director erred as a matter of law on the issues identified above. This motion is supported by the *Affidavit of Travis L. Thompson* and the *Memorandum in Support of A&B Irrigation District's Motion for Summary Judgment* filed together herewith. A&B further requests oral argument on its motion.

DATED this 3rd day of October, 2008.


Roger D. Ling

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'JK Simpson', is written over a horizontal line.

John K. Simpson
Travis L. Thompson
Paul L. Arrington

Attorneys for A & B Irrigation District