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*Attorneys for Petitioner A&B Irrigation District*

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

	)	
	)	
IN THE MATTER OF THE PETITION FOR	)	<b>DOCKET NO. 37-03-11-1</b>
DELIVERY CALL OF A&B IRRIGATION	)	
DISTRICT FOR THE DELIVERY OF	)	<b>MOTION TO QUASH IGWA'S</b>
GROUND WATER AND FOR THE	)	<b>SUBPOENAS OF A&amp;B'S LAY</b>
CREATION OF A GROUND WATER	)	<b>WITNESSES</b>
MANAGEMENT AREA	)	
	)	<b>NOTICE OF HEARING</b>
	)	

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COMES NOW, A & B Irrigation District ("A&B" or "District"), by and through counsel of record, and hereby moves to quash the *Subpoenas Duces Tecum* issued by IGWA and the City of Pocatello ("IGWA") for A&B's lay witnesses, Harold Mohlman, Ken Kostka, Tim Eames, Timm Adams, and Virgil Temple.

## BASIS FOR MOTION

IGWA served subpoenas on A&B's witnesses to appear for depositions scheduled October 27 – 29, 2008. *See* Exhibit A (Harold Mohlman).<sup>1</sup> The subpoena commands the witnesses to appear and produce various records and documents. *See id.* (requests 1 – 9, p. 2). Although the subpoenas reference “BY ORDER OF THE COURT” and threaten the witnesses with “contempt of court”, this proceeding is currently before the Department of Water Resources, not a district court. Pursuant to the Department's Rules of Procedure (37.01.01 *et seq.*), subpoenas can only be issued in accordance with Rule 525, which states:

*The agency may issue subpoenas upon a party's motion or upon its own initiative.* The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms.

Rule 525 (emphasis added).

The Department has not issued any subpoenas in this case and IGWA has not filed the required motion. IGWA failed to follow the Department's rules in this case and instead proceeded to issue subpoenas from counsel only. IGWA had no authority to take the action it did, therefore, the subpoenas must be quashed.

Alternatively, A&B requests a conditional denial of this motion upon “reasonable terms” as determined by the Hearing Officer. *See* IDAPA 37.01.525; *see also*; I.R.C.P. 45(d). As set forth in A&B's *Motion for Protective Order*, IGWA is requesting the production of voluminous and irrelevant documents at the witnesses' depositions. *See A&B Motion for Protective Order* at 6-9. The requests in the subpoenas (identical to previous requests in the notices of deposition

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<sup>1</sup> A&B has requested copies of the subpoenas for each of the witnesses (forthcoming from IGWA's counsel). For purposes of this motion A&B assumes that the subpoenas for the other witnesses are identical and have been issued in the same form.

and discovery requests) are unduly burdensome, oppressive, and unreasonable. *See id.*

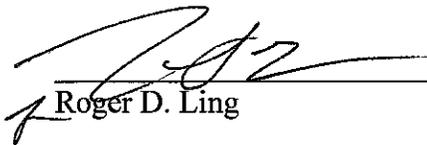
While A&B has contacted its witnesses and made the necessary arrangements for the depositions with counsel (which the witnesses have affirmed they will attend), IGWA continues to press its request to review 20 years' worth of information from the witnesses that is not relevant to this proceeding. The continued requests, this time in the form of an inappropriate and unauthorized subpoena, should be denied for the same reasons as explained in A&B's *Motion for Protective Order*.

Although A&B's witnesses have agreed to the deposition schedule and will appear as requested, IGWA's requests for production of documents in its authorized subpoenas should be denied. Accordingly, A&B respectfully requests the Hearing Officer to grant its motion to quash.

PLEASE TAKE NOTICE that A&B Irrigation District will call up for hearing its *Motion to Quash IGWA's Subpoenas of A&B's Lay Witnesses* on **Wednesday October 22, 2008 at 10:00 a.m.** (or as soon as counsel can be heard thereafter) before the Hearing Officer Honorable Gerald F. Schroeder. Parties may participate by telephone by dialing the following number **1-713-577-1201** and entering the participant code **260503**.

DATED this 21<sup>st</sup> day of October, 2008.

BARKER ROSHOLT & SIMPSON LLP



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Roger D. Ling  
Attorney at Law



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

Attorneys for A&B Irrigation District

## CERTIFICATE OF MAILING

I hereby certify that on this \_\_\_\_ day of October, 2008, 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:

Hon. Gerald F. Schroeder c/o Victoria Wigle IDWR P.O. Box 83720 Boise, ID 83720 <a href="mailto:victoria.wigle@idwr.idaho.gov">victoria.wigle@idwr.idaho.gov</a> <a href="mailto:fcjschroeder@gmail.com">fcjschroeder@gmail.com</a>	Randall C. Budge Candice M. McHugh Racine Olson PO Box 1391 201 E Center Street Pocatello ID 83204-1391 <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a> <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a>	Sarah A. Klahn White & Jankowski LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202 <a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a>
B.J. Driscoll McGrath Meacham Smith PLLC 414 Shoup PO Box 50731 Idaho Falls ID 83405 <a href="mailto:bjd@eidaholaw.com">bjd@eidaholaw.com</a>	Steve L Stephens Butte Co Prosecuting Attorney 260 Grand Ave PO Box 736 Arco ID 83213	Fred & Phyllis Stewart 300 Sugar Leo Road St George UT 84790
Michael Patterson, President Desert Ridge Farms Inc. PO Box 185 Paul ID 83347	City of Firth PO Box 37 Firth ID 83236	Todd Lowder 2607 W 1200 S Sterling ID 83210
Neil and Julie Morgan 762 W Hwy 39 Blackfoot ID 83221	Charlene Patterson Patterson Farms of Idaho 277 N 725 Lane W Paul ID 83347	William A. Parsons Parsons Smith Stone LLP 137 West 13 <sup>th</sup> St PO Box 910 Burley ID 83318 <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a>
A. Dean Tranmer City of Pocatello PO Box 4169 Pocatello ID 83201 City of Pocatello <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a>	Winding Brook Corp c/o Charles W Bryan Jr UBS Agrivest LLC PO Box 53 Nampa ID 83653	James C. Tucker Idaho Power Company 1221 West Idaho Street Boise, ID 83702-5627 <a href="mailto:jtucker2@idahopower.com">jtucker2@idahopower.com</a>

Lary S Larson Hopkins Roden Crockett Hansen & Hoopes PO Box 51219 Idaho Falls ID 83405-1219	Jo Beeman, Esq. Beeman & Associates 409 W Jefferson Boise ID 83702 <a href="mailto:jo.beeman@beemanlaw.com">jo.beeman@beemanlaw.com</a>	City of Basalt PO Box 178 Basalt ID 83218

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James S. Lochhead Michael A. Gheleta Brownstein Hyatt Farber Schreck P.C. 410 Seventeenth Street Suite 2200 Denver, CO 80202 <a href="mailto:jlochhead@bhfs.com">jlochhead@bhfs.com</a> <a href="mailto:mgheleta@bhfs.com">mgheleta@bhfs.com</a>	F. Randall Kline P.O. Box 397 427 N. Main St. Pocatello, ID 83204	

  
Jessica Nielsen

# Exhibit A

Randall C. Budge (ISB # 1949)  
Scott Smith (ISB # 6014)  
Candice M. McHugh (ISB # 5908)  
RACINE OLSON NYE BUDGE &  
BAILEY, CHARTERED  
PO Box 1391  
Pocatello, ID 83204-1391  
Telephone: (208) 232-6101  
Facsimile: (208) 232-6109

ATTORNEYS FOR IDAHO GROUND WATER  
APPROPRIATORS

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(208) 234-6297 (Fax)  
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[sarahk@white-jankowski.com](mailto:sarahk@white-jankowski.com)

ATTORNEYS FOR THE CITY OF POCATELLO

MINIDOKA SHERIFF  
2008 OCT 14 P 3:05

**SERVICE  
COPY**

**BEFORE DEPARTMENT OF WATER RESOURCES**

**STATE OF IDAHO**

IN THE MATTER OF THE  
PETITION FOR DELIVERY CALL  
OF A&B IRRIGATION DISTRICT  
FOR THE DELIVERY OF GROUND  
WATER AND FOR THE CREATION  
OF A GROUND WATER  
MANAGEMENT AREA

Docket No.: 37-03-11-1

**SUBPOENA DUCES TECUM OF  
HAROLD MOHLMAN**

The State of Idaho to:  
Harold Mohlman  
462 E 700 N  
Rupert, Idaho 83350

**YOU ARE COMMANDED:**

[ ] to appear in the Court at the place, date and time specified below to testify in the  
above case.

to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below.

(1) Please produce all documents, records, reports, notes, calendars, memoranda, letters, whether written or electronic, that relate to or were relied upon in your answer(s) to the Interrogatories Nos. 14 – 21 served in this matter on or about October 1, 2008.

(2) All documents, claims or other data submitted by you for all farming activities on the above identified farms or parcels to the Farm Services Agency, the Federal Crop Insurance Corporation or other entity, over the last 20 years that reflect crop type and yield.

(3) All documents that support the statement made in A&B's lay witness disclosure that states you will testify regarding "impacts to his operations due to reduced water supplies on farms."

(4) All documents and records you maintain that show the amount of water ordered by you and delivered and charged by A&B for the past twenty (20) years. Such documents may include notes, calendars, diaries, receipts or other records maintained that reflect water deliveries or charges.

(5) All reports, records or receipts for the past twenty (20) years that indicate crop yield or production given to you by any purchasers or warehouses for your crops including but not limited to any such documentation provided to you from Amalgamated Sugar Company.

(6) Copies of any notes, emails or other written material in your possession of conversations with representatives of A&B Irrigation District, their expert witnesses or attorneys.

(7) Copies of all documents or written material you reviewed in preparation for this deposition.

(8) Map of your farm showing parcels irrigated for the past twenty (20) years.

(9) Any A&B newsletters and other correspondence from A&B in your possession for the past twenty (20) years..

to permit inspection of the following premises at the date and time specified below.

**PLACE, DATE AND TIME:**

Law Offices of Barker Rosholt and Simpson, LLP  
113 Main Avenue West, Suite 303  
Twin Falls, Idaho 83303-0485

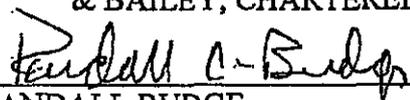
**Deposition is to take place on October 28, 2008 at 1:00 p.m.**

You are further notified that if you fail to appear at the place and time specified above, or to produce or permit copying or inspection as specified above that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this subpoena.

**BY ORDER OF THE COURT.**

DATED this 14<sup>th</sup> day of October, 2008.

RACINE OLSON NYE BUDGE  
& BAILEY, CHARTERED



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RANDALL BUDGE

*Attorneys for Idaho Ground Water Appropriators*