

2. I am over the age of 18 and have knowledge of the documents and legal proceedings pertinent to this matter.
3. A true and correct copy of an excerpts from the transcript of the deposition of Christian R. Petrich, Ph.D., dated September 24, 2008, is attached hereto as Exhibit A.
4. A true and correct copy of an excerpts from the transcript volumes I and II of the deposition of Dan Temple, dated June 25, 2008, is attached hereto as Exhibit B.

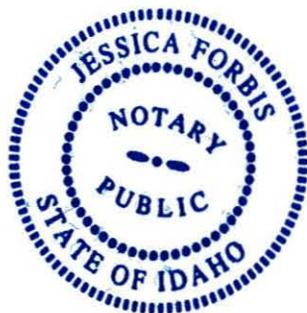
Dated this 29 day of October, 2008.

BARKER ROSHOLT & SIMPSON LLP



TRAVIS L. THOMPSON
Attorney for A&B Irrigation District

SUBSCRIBED AND SWORN to before me this 29 day of October, 2008.



Notary Public for Idaho
Residing at: Twin Falls
Commission Expires: 4/3/12

EXHIBIT A

Petrich Deposition

Tr. at p. 64, Ins. 11-15

Tr. at p. 66, Ins. 8-18

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PETITION FOR)
DELIVERY CALL OF A & B IRRIGATION) DOCKET No: 37-03-11-1
DISTRICT FOR THE DELIVERY OF)
GROUND WATER AND FOR THE CREATION)
OF A GROUND WATER MANAGEMENT)
AREA)
_____)

COPY

DEPOSITION OF CHRISTIAN R. PETRICH, Ph.D.

September 24, 2008

REPORTED BY:

COLLEEN P. KLINE, CSR No. 345

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1 an authorized amount. It does not provide an
2 amount that is somehow guaranteed. And that
3 simply producing less water on a right, does not
4 in and of itself indicate injury.

5 Q. You understand the prior appropriation
6 doctrine in Idaho; what that means?

7 A. From a layperson's perspective, yes.

8 Q. What does it mean to you?

9 A. It would -- it's a basis for allocating
10 water in times of shortage. And those with the
11 most senior rights would have priority use.

12 Q. It doesn't matter what the supply is?

13 A. I think that that -- I mean, we're
14 getting into an area that becomes more legal than
15 hydrologic. That's also balanced with some of
16 the components in the Ground Water Act that would
17 look for encouraging full development of the
18 resource.

19 Q. Are you qualified to offer an opinion
20 on injury?

21 A. From a legal standpoint, no.

22 Q. From a technical standpoint?

23 A. I think the -- no, I would not be able
24 to make the ultimate decision about injury. And
25 I believe that that would go -- that

1 responsibility would rest with the Department.

2 Q. So your statement that pumping less
3 than diversion rate, less than the volume, does
4 not in itself represent injury. Do you have an
5 opinion on what does represent injury?

6 A. Well, I think in this case, it -- the
7 sentence speaks for itself. As far as injury,
8 you know, just simply pumping less than an
9 authorized amount, in my experience has not been
10 deemed to be injury.

11 I'm not qualified to determine injury.
12 The Department would. But the Department, I
13 think, would typically look at things like
14 reduced crop yields, or fallowed acres as signs
15 of potential injury.

16 Q. Have you read the Conjunctive
17 Management Rules' definition of material injury?

18 A. Not recently.

19 Q. Have you reviewed Hearing Officer
20 Schroeder's prior decision describing what
21 constitutes prior injury to a senior water right?

22 A. Not in detail.

23 Q. I guess on your general lay experience
24 and your understanding of the Prior Appropriation
25 Doctrine in Idaho, if the exercise of another

1 water right contributes to reduce water
2 availability to a senior right, does that
3 constitute injury?

4 A. Not automatically. I think that
5 there -- I mean, there are a variety of criteria.
6 So there would be a prior appropriation of a
7 priority of the right. There would be some of
8 the full economic use and development components
9 under the Ground Water Act.

10 And the Department ultimately is the
11 one that would balance those and make a decision.

12 And at this point, I think we would have the
13 Department's opinion in the form of the January
14 order.

15 Q. I guess, how do you infer that .75
16 miner's inch per acre is sufficient to meet
17 A & B's irrigation requirements?

18 A. I think there are several references to
19 the three-quarter inch per acre. First, the
20 motion to proceed stated that A & B is unable to
21 divert the average of .75 of a miner's inch per
22 acre, which is the minimum amount necessary to
23 irrigate lands within A & B during peak periods
24 when irrigation water is most needed. So the
25 motion to proceed noted that that was sort of a

1 minimum peak demand.

2 Second, the annual reports, and it
3 appears the internal accounting within A & B has
4 been focused on the .75 threshold. I recognize
5 that the .75 threshold has also been viewed as a
6 sort of a basis for when rectification begins.
7 But the .75 written concept comes from, in part,
8 the motion to proceed, which states this is the
9 minimum amount during peak periods that is
10 necessary to irrigate lands within A & B.

11 Q. So nothing based on your own review or
12 technical analysis of an irrigation requirement?

13 A. I have not done an irrigation
14 requirement analysis personally for the A & B
15 project.

16 Q. And on page 5, you've referenced that
17 .75 miner's inch as a delivery standard. And I
18 guess other than the -- I guess where do you come
19 up with that term, "delivery standard"?

20 A. Could you point me to the paragraph
21 where I've got that? I just need to read the
22 context.

23 Q. That second to last paragraph, you talk
24 about a delivery of more than .75 inches per
25 acre, if not ideal, is sufficient based on

1 A & B's internal standard.

2 A. Okay. It appears that with annual
3 reports -- starting in whatever year they began,
4 it was 1962 or so through current -- has measured
5 the performance of wells based on the delivery of
6 either .73 or .75 inches per acre. And to me
7 that began looking like a general internal
8 standard that was being used by A & B to track
9 performance within its system.

10 Q. Let's take a look at Exhibit 64. I
11 believe that's the 2007 pump report.

12 A. Okay. I'm sorry. 67?

13 Q. 64.

14 A. 64. (Witness complying.)

15 Q. Do you recognize and understand this
16 document?

17 A. Okay.

18 Q. Have you seen it before?

19 A. Yes.

20 Q. And looking over at, I guess, the
21 criteria available per acre at the turnout, that
22 2007 column at the far right?

23 A. Okay.

24 Q. You understand what's being represented
25 there?

1 A. (Witness complying.) Okay. Let me
2 just put the first sentence in the record, too.
3 "In motion to proceed, A & B asserts that .75 of
4 a miner's inch is 'the minimum amount necessary
5 to irrigate lands within A & B during the peak
6 (sic) periods when irrigation water is most
7 needed.' However, the USBR, which developed the
8 A & B project, stated in a 1985 report that 0.75
9 of a miner's inch is the maximum rate of
10 delivery."

11 Q. So would you agree that conclusion is
12 factually incorrect?

13 A. I agree that some of the well systems
14 are able and do deliver more than 0.75 of a
15 miner's inch per acre.

16 Q. So the .75 is not a maximum physical
17 capacity A & B has in its well systems?

18 A. I believe that's correct.

19 Q. Okay. I guess, what's the basis for
20 your statement that A & B can meet crop needs
21 with the delivery rate of less than 1,100 cfs?

22 A. Are we through with this (indicating)?

23 Q. Yes.

24 A. And could you please refer me to the
25 statement in my report?

1 A. I believe so.

2 Q. And is that a delivery per acre at the
3 headgate to A & B landowners?

4 A. That would be, I believe, a delivery
5 per irrigable acre at the headgate based on acres
6 as A & B has tabulated them, and based on A & B's
7 flow records.

8 Q. And would you agree that A & B can
9 physically deliver more than .75 miner's inch per
10 acre at these various well systems where that
11 criteria is above that?

12 A. I think in some of those, it can, yes.
13 And, in fact, does.

14 Q. So do you agree for those well systems
15 where they deliver more than that, that the .75
16 miner's inch is not a maximum rate of delivery on
17 those systems?

18 A. Yes.

19 Q. Let's take a look at the order, Exhibit
20 1. You can keep that out, too, please.

21 A. (Witness complying.)

22 Q. I'm on page 43, paragraph 23.

23 A. (Witness complying.) Okay.

24 Q. If you could read that second sentence
25 in that paragraph?

1 Q. Page 6, just the top of the page.

2 A. (Witness complying.) I think that
3 there are several things there. First of all,
4 A & B has been delivering less -- or has been
5 delivering less than 1,100 cfs and has -- there
6 has been no evidence that I have seen of either
7 fallowed acres, or reduced yields as a result of
8 being less than 1,100 cfs.

9 It appears -- and I have not followed
10 these previous cases or decisions closely -- but
11 it appears that five-eighths of an inch has been
12 accepted as an appropriate delivery rate in other
13 areas that are not far distant from A & B. And
14 so it appeared to me that A & B, you know, for
15 those reasons, has been able to meet needs with a
16 delivery rate that's been less than 1,100 cfs.

17 Q. What do you define as "crop needs" in
18 that statement?

19 A. In what context, I think what I'm
20 referring to is, a sufficient amount of water to
21 produce crops, if the amount of water was
22 insufficient, then one would anticipate that
23 there would be acres that could not be irrigated,
24 or that would have been made fallow -- or would
25 have been fallow because of an insufficient water

EXHIBIT B

Temple Deposition

- Tr. Vol. I, p. 43, Ins. 1-25
- Tr. Vol. II, p. 269, Ins. 23-25
- Tr. Vol. II, p. 270, Ins. 1-16
- Tr. Vol. II, p. 278, Ins. 1-8

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF THE)
 PETITION FOR DELIVERY CALL) Docket No. 37-03-11-1
 OF A&B IRRIGATION DISTRICT)
 FOR THE DELIVERY OF GROUND)
 WATER AND FOR THE CREATION)
 OF A GROUND WATER)
 MANAGEMENT AREA)
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COPY

DEPOSITION OF DAN TEMPLE, VOLUME I

June 24, 2008

REPORTED BY:

AMY HORSLEY, C.S.R. No. 714, R.P.R.

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1 volume.

2 Q. Okay. You used the term "well system
3 pumping capacity." What does that mean?

4 A. It's the pump or pumps', if it's a dual
5 pump system, maximum pumping capacity at any
6 given time.

7 Q. So it's the mechanical capacity of the
8 equipment?

9 A. I don't know if that's -- I don't know
10 if that's correct. The pump may have a
11 mechanical, in your words, pumping capacity
12 greater than it's pumping. Because of water
13 table declines, it's pumping less than its
14 mechanical capacity or its hydraulic design.

15 Q. So how did you determine what that well
16 system pumping capacity is, or how was that
17 determined, I guess I should say, for this table?

18 A. It's determined with measuring the flow
19 from the pump or pumps' discharge.

20 Q. Is that flow measured in pumping rate
21 as well as hours per day for each of the pumping
22 rates? Does that make sense?

23 A. Yes. It's a combination of both, but
24 to get this, it's just the instantaneous flow.

25 Q. Okay. While in the course of an entire

1 irrigation season, which instantaneous flow,
2 then, do you take for the information in this
3 column?

4 A. This would be based on the low flow of
5 the season.

6 Q. Okay. So is that related to the next
7 column over, Low Pump Rate Under Full Discharge
8 Typical in Midseason Pumping?

9 A. Yes.

10 Q. How are those two columns different? I
11 mean I see they are different looking down them,
12 but how do they end up with different numbers in
13 them?

14 A. The fourth column, Inches Required to
15 Deliver .75, that's the inches we need to -- the
16 minimum amount we need to meet three quarters.

17 Q. Um-hmm.

18 A. The next column over is the actual low
19 flow measured during that given year.

20 Q. In 1981 were there constant data
21 recorders on these pumps that would allow you to
22 basically look at the entire five months of
23 pumping and pick out the low one, or is it more
24 of a guess?

25 A. There's not data recorders. Our system

1 is -- all our delivery system is a lock system

2 controlled by district staff. So once the
3 ditchrider regulates the flow to meet the demand,
4 there is no change in that system for 24 hours,
5 excluding power outages or emergency shutoffs.

6 Q. Okay.

7 A. And so he measures that, sets it,
8 regulates that, measures it the next day, records
9 it and continues that cycle seven days a week
10 throughout the irrigation season.

11 Q. Okay. So let's take a hypothetical
12 well on one of these polygons. And I'm sorry,
13 the ditchrider, is that what you called them?

14 A. Our terminology is ditchriders.

15 Q. Okay. The ditchrider comes and sets
16 the pump on June 1st for some rate of production,
17 and I'm not even going to worry about what that
18 is. That pump runs for 24 hours at that rate of
19 production no matter what; is that right?

20 A. Excluding the power outages and
21 emergencies, yes.

22 Q. Sure. Okay. And then on June 2nd he
23 may change that?

24 A. He will reregulate it according to
25 water user demands.

1 Q. Okay. But the pumps run 24 hours?

2 A. Yes.

3 Q. Okay. How often is the instantaneous
4 flow rate measured?

5 A. It's measured daily.

6 Q. But it would be at that moment when the
7 ditchrider is there?

8 A. Yes, once a day.

9 Q. Okay.

10 A. And we do have water masters and we do
11 have a hydrographer that are going out and making
12 periodic measurements across the project on these
13 wells. So it could be measured twice in a day,
14 but the rider measures it and regulates it once.

15 Q. So let's explore that for a minute. So
16 you've got the ditchrider's records, and he's
17 presumably recording the time he's there?

18 A. Yes, it's logged.

19 Q. And then there's -- so we know what the
20 instantaneous rate is at 8:00 in the morning or
21 whatever time he's there for the season, but then
22 there might be these spot measurements, which are
23 a different set of data that are kept by the
24 water master or the hydrographer?

25 A. The hydrographer, he would keep his.

BEFORE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

IN THE MATTER OF THE)
PETITION FOR DELIVERY CALL) Docket No. 37-03-11-1
OF A&B IRRIGATION DISTRICT)
FOR THE DELIVERY OF GROUND)
WATER AND FOR THE CREATION)
OF A GROUND WATER)
MANAGEMENT AREA)

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DEPOSITION OF DAN TEMPLE, VOLUME II

June 25, 2008

REPORTED BY:

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1 wet, average and dry years. A typical
2 expectation would be that the efficiencies would
3 increase in a dry year when there was less water
4 available and decrease in a dry year when there
5 was more water available. Instead, the reverse
6 relationship occurs."

7 Do you have any understanding or
8 explanation you could provide on that comment,
9 why that is the case?

10 A. No, I'm not sure what they're referring
11 to there. I can't respond to that.

12 Q. Let's move on to the bottom of page 35.
13 That very last sentence that continues on to the
14 top of page 36 states as follows: "When demand
15 exceeds capacity, the water users are allocated
16 water on an equal-share basis according to
17 irrigable acres."

18 Is the irrigable acres that you're
19 referring to there those that were certified
20 originally by the Bureau when the project was
21 developed as being irrigable, or is that a
22 current irrigable number?

23 A. It's -- you are correct. It's the
24 original acres certified by Reclamation as
25 irrigable.

1 Q. So is this describing that water is
2 received on a continuous flow basis by the users
3 as opposed to a rotational basis? It says they
4 get it on an equal share.

5 A. Well, it says, "When the demand exceeds
6 capacity, the water users are allocated water on
7 an equal-share basis according to the" -- it's a
8 prorated basis depending on the deliverable
9 amount from the well system.

10 Q. So it would be a prorated reduction to
11 whatever the supply is that's available?

12 A. Yeah, they get their prorated share of
13 that supply that is available amongst the acres
14 in that system.

15 Q. But they still -- the farmers still
16 take water on a continuous flow basis; they
17 don't -- one person goes on, and another one
18 comes off, and you rotate between them?

19 A. No. They call, demand the water; they
20 can take as long as they want. They're not
21 forced off on a rotation basis. It's at their
22 choice.

23 Q. In the middle of that page 36 after the
24 bullet points, a comment is made, "The district
25 has abandoned six production groundwater wells

1 and relied on other district water sources in
2 order to reliably deliver water to the district's
3 assessed irrigable acreage."

4 Do you see that sentence?

5 A. Yes, I do.

6 Q. What was the source of water that was
7 utilized to offset those that were abandoned?
8 Would that be other wells that are producing
9 above what the needs are?

10 A. No. That is referring to abandoned
11 wells in the west end of the project, as of this
12 time frame of this report, that are receiving the
13 surface water supplies that the district has
14 moved out there.

15 Q. What would be the conversion acres?

16 A. The conversion acres is correct.

17 Q. We had some discussion yesterday about
18 a number of the wells that are underproducing
19 less than the .75 that the district policy would
20 prefer to achieve. Do you know about how many
21 wells have the ability to produce more than the
22 .75 inches per acre of those operating wells,
23 just a rough percent of how many of them are
24 under and how many can produce more than that?

25 A. Well, first of all, it will depend on

1 which year. That has changed yearly because of
2 the wells that continue to fall below that and
3 wells that are worked on and brought above that.
4 So I would need a year, but I believe the Motion
5 to Proceed talked about -- I think it's 39 wells
6 that were below it in 2006. So it would be the
7 difference between the 39 and the 177 that were
8 above.

9 Q. Okay. Yeah, we had that exhibit
10 yesterday, if I can find it. The list of the
11 underproducing wells would simply be a --

12 A. Yeah, Item G lands. And I believe it
13 was 39 in 2006.

14 Q. One would simply need to take those
15 underproducing wells on a year-to-year basis that
16 you have identified, if I can find that exhibit,
17 and subtract those from the total wells, and that
18 would give you the number that would be
19 overproducing in that particular year?

20 A. That is correct, but I wouldn't say
21 overproducing. Were producing more than the .75.

22 Q. Correct.

23 (Discussion held off record.)

24 Q. (BY MR. BUDGE) Okay. Looking at
25 Exhibit 56 that's entitled "Well Systems With

1 and, again, make the assumptions by looking at
2 the water table elevations and the hydrographs
3 and compare that to past years to determine if
4 the aquifer was in a decline or if it was in an
5 increase.

6 Then you would have to look at the pump
7 records to see if there was mechanical problems
8 with the pumps. If you could rule that out, then
9 you can make an assumption the decline may or may
10 not have been caused by aquifer, but I would just
11 have to be on a case-by-case basis.

12 Q. Okay. Yeah, you haven't done any
13 analysis that you would have knowledge based on
14 your review of the record of what was going on
15 back in the '60s that would cause those shortages
16 in those units?

17 A. No.

18 Q. The Motion to Proceed that A & B filed
19 made this statement on pages 7 and 8: It says,
20 "A & B will continue to suffer water shortages,
21 and these shortages will become more severe as
22 groundwater levels in the ESPA continue to
23 decline."

24 To your knowledge, is that comment
25 referring to shortages during the peak of the

1 Q. Okay. That Petition to Reconsider that
2 A & B filed also makes a comment on page 6 that
3 you had converted about 1,446 acres from
4 groundwater to surface water -- excuse me, 1,447
5 acres got converted. Has that number changed
6 since then?

7 A. That was an incorrect number installed
8 in there. The correct number is 1,377.8 acres.

9 Q. Okay.

10 MR. THOMPSON: What petition are you
11 referring to, Randy?

12 MR. BUDGE: It was the Petition to
13 Reconsider on page 6.

14 MR. THOMPSON: Requesting hearing, the
15 72, Exhibit 72?

16 MR. BUDGE: Yeah.

17 THE WITNESS: I still stand with the
18 answer.

19 Q. (BY MR. BUDGE) Are there any plans to
20 increase the number of conversion acres to deal
21 with your problems in that southwest area?

22 A. No, there are not.

23 Q. Are there limitations to how much
24 surface water there is available to supply
25 conversion acres in the B unit?

1 season, or are you also referring to shortfalls
2 that contend in both the spring and the fall?

3 A. It would have to deal with, I guess,
4 both. There are particular well systems that
5 have shortages all through the irrigation season
6 now, and there are others where well system
7 shortages are suffered through the peak.

8 Q. And so in making that statement, then,
9 Dan, you're saying that shortages relate to
10 instantaneous production rates as well as annual
11 average volumes? In other words, there's times
12 throughout the season that some of those systems,
13 if you did an instantaneous measurement, are
14 simply going to be below that objective level of
15 .75 inches?

16 A. And so what was the question on that
17 statement?

18 Q. Yeah, let me rephrase that. That was a
19 poor question. When you refer to a shortage
20 becoming more severe, do you come to that
21 conclusion based upon instantaneous production
22 rates, or are you looking at annual production
23 volumes from a particular unit?

24 A. Again, it would be both. The
25 instantaneous leads to shortages in annual.

1 A. There could be limitations on water
2 available. There are limitations on system and
3 pumping capacities.

4 Q. And what's the source of that
5 conversion water?

6 A. Surface water.

7 Q. Is that water that you lease from the
8 Upper Snake, or is that under the company --
9 excuse me, under the district's natural flow
10 rights?

11 A. It's not leased water. It could be
12 storage water or our -- yeah, storage water.

13 Q. So it's the district's own water?

14 A. Yes.

15 Q. When A & B speaks in some of its
16 pleadings that we've discussed of water
17 shortages, what are some of the reasons that
18 A & B believes that the water shortages exist?
19 What are some of the causes?

20 A. What are the causes of our water
21 shortages?

22 Q. Um-hmm.

23 A. It's the aquifer declines that have
24 occurred caused by junior pumping.

25 Q. So pumping would be a part of that.