BEFORE 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	)	**SCHEDULING ORDER**

On June 15, 2005, the Director of the Department of Water Resources ("Director" or "Department") conducted a status and scheduling conference in the above captioned matter.

Subsequently, the Director ordered that parties submit proposals in regard to the establishment of a prehearing schedule. The proposed prehearing schedules were ordered to be consistent with the Director's intention to schedule a hearing in the above captioned matter in January 2006. In addition, the Director stated that if parties wished to engage in discovery, that motions requesting discovery, in accordance with IDAPA 37.01.01.521, be filed with the Department.

ORDER

Based upon consideration of the proffered prehearing schedules and discovery requests, and consistent with the foregoing, the Director HEREBY ORDERS the following:

1. By August 5, 2005, Initial Disclosures to other parties must be served. The initial disclosure shall include the following:

(a) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

(b) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment; and

(c) the identity of any witness who is retained or specially employed to provide expert testimony or whose duties as an employee of the party will involve the giving of expert testimony in this proceeding.

A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

2. On August 5, 2005, discovery period opens, subject to the following terms and conditions:

(a) Depositions may be taken by oral examination only. Parties may immediately be deposed, and experts may be deposed upon filing of the expert report required by this Order. Department employees will be available for deposition upon written request. Other persons having knowledge of relevant facts may be deposed voluntarily. If a person having knowledge of relevant information refuses to be voluntarily deposed, the Director will issue a subpoena to that person to appear. Prior to issuance of the subpoena, however, the party seeking to conduct a deposition must notify the deponent that a subpoena will be issued for attendance at the deposition and must propose the time and location of the deposition to the deponent to allow the deponent to ask for reasonable changes to the place and time of the deposition. Verification of communication with the deponent must be submitted to the Director prior to issuance of a subpoena.

(b) Parties may make reasonable requests for production of documents.

(c) Requests for admission are not authorized.

(d) Prior to serving interrogatories on another party, the proponent of interrogatories must submit to the Director a detailed written explanation of the subject matter to be discovered and must also show that the information cannot be obtained through other sources of information. The Director may consider depositions as another source of information. General interrogatories asking for identification of witnesses, the nature of the witnesses' testimony, and statements of issues for hearing are not acceptable. Information about witnesses, the nature of their testimony, and issues for the hearing will be submitted according to the timetable set forth below. If the Director finds that the requested interrogatories will result in discovery of evidence not otherwise available, he will approve the request by letter. No more than ten (10) interrogatories may be served by one party on another party and be outstanding against that party at any given time.

(e) The Director does not have the authority to order entry on the property of a party for inspection. Requests for inspection and related data gathering should be submitted in writing directly to the party. If a party refuses a

written request for reasonable entry and data gathering, the party requesting entry may file a motion to compel and motion for sanctions with the Director. If the Director finds that a party has been denied reasonable entry, the Director may: (i) order the party refusing entry to gather the data sought and make it available; and/or (ii) require the party refusing entry to carry the burden of proof related to any issues the field inspection would have addressed; and/or (iii) assume assertions by the party seeking entry that could have been addressed by the inspection are true; and/or (iv) limit presentation of evidence by the party refusing inspection.

(f) Other than the instructions above, all discovery is to be conducted according to the Idaho Rules of Civil Procedure.

3. By August 19, 2005, parties must submit a list of issues of fact and law for the hearing. The parties shall also submit a report stating the general basis of each witness' testimony, other than expert witnesses.

4. September 2, 2005, is the last day for parties to identify all expert witnesses expected to be called to testify in this matter that were retained after the date of the initial disclosure. A party is required to disclose the name of an expert witness that will be called to testify at the time the witness is retained and shall not delay the disclosure until the cut-off date for disclosure.

5. By October 17, 2005, parties must submit expert witness reports. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four (4) years.

6. By October 31, 2005, parties must submit rebuttal expert opinions. Disclosures under this paragraph shall be subject to the same requirements set forth in paragraph 5 above.

7. November 7, 2005, is the deadline for all dispositive motions.

8. November 21, 2005, is the deadline for responses to all dispositive motions.

9. December 5, 2005, is the deadline for replies to all dispositive motions.

10. December 12, 2005, is the last day for discovery and responses to discovery. Notwithstanding this cut-off date, the parties shall be entitled to receive the year-end report from the Watermaster of Water District No. 01 and to conduct any necessary deposition of the Watermaster before January 11, 2006.

11. By December 19, 2005, parties must identify exhibits, data, scientific information, and all documents that may be used at hearing.

12. By January 3, 2006, parties may submit proposed orders to govern procedures at the hearing.

13. On January 9, 2006, a prehearing conference will be conducted at 9:00 a.m. at the main offices of the Department of Water Resources.

14. By January 16, 2006, parties must submit written opening argument, and, if desired, trial brief.

15. On January 30, 2006, the hearing will commence at 9:00 a.m. at the main offices of the Department of Water Resources.

Because of the shortness of time before trial, a party is under a duty to supplement all disclosures and discovery required or permitted under this Order immediately upon discovery of the need for such supplementation. A reasonable time will be allowed to prepare the supplemental response.

All disclosures and other responses to discovery under this Order must be made in writing, signed by at least one attorney of record in the attorney's individual name whose address shall be stated, and served on other parties. An unrepresented party shall sign the disclosure or other response to discovery and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure or response is consistent with this Order and the Idaho Rules of Civil Procedure and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and not unreasonable or unduly burdensome or expensive, given the needs of the case, and the disclosures and discovery already had in the case.

If without substantial justification a certification is made in violation of this Order or the Idaho Rules of Civil Procedure, upon motion or upon his own initiative, the Director will impose upon the person who made the certification an appropriate sanction as permitted by law.

DATED this 22nd day of July 2005.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July 2005, the above and foregoing, was served by the method indicated below, and addressed to the following:

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