

Roger D. Ling, ISB #1018
Attorney at Law
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone (208) 733-0700
Facsimile (208) 735-2444

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)
DELIVERY CALL OF A&B IRRIGATION)
DISTRICT FOR THE DELIVERY OF) **DOCKET NO. 37-03-11-1**
GROUND WATER AND FOR THE) **RESPONSE TO MOTION TO**
CREATION OF A GROUND WATER) **AUTHORIZE INTERROGATORIES**
MANAGEMENT AREA) **& NOTICE OF HEARING**
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COMES NOW the Petitioner, A & B Irrigation District (“A&B”), by and through its attorneys of record, and submits its *Response to Motion to Authorize Interrogatories & Notice of Hearing*, filed by the Idaho Ground Water Appropriators, Inc. (“IGWA”). As discussed below, A&B joins in IGWA’s motion to authorize the use and service of interrogatories, in the above listed matter. However, any order authorizing such discovery should contain limitations and guidelines, particularly in a case like this, with over 30 parties.

Department Rule of Procedure 521 states that a party may move the hearing officer for an order authorizing discovery. Rule 522 recognizes that discovery rights are reciprocal. IGWA has filed a motion seeking to authorize the use of interrogatories in the above-captioned matter (the “A&B Call”), in order to clarify the nature of the claims “and provide all parties the opportunity to discover and disclose the facts that are relevant to this case and provide all parties the opportunity to develop a reasonable deposition schedule of lay and expert witnesses as well as evaluate other discovery requests.” *IGWA Motion* at 3. A&B does not object to the use of interrogatories in these proceedings and joins in IGWA’s motion.

Interrogatories are a valuable discovery tool

The principal purpose of interrogatories is to afford parties information in the possession of the other party regarding the issues in suit to enable the propounding party to prepare for trial and to reduce the possibility of surprise in the trial.

Lester v. Salvino, 141 Idaho 937, 120 P.3d 735 (App. Ct. 2005). As such, it may become necessary for A&B to submit interrogatories to IGWA or the ground water users represented by IGWA in these proceedings, many of whom are members of ground water districts.

While A&B believes that interrogatories would be beneficial in these proceedings and should be authorized, A&B believes there must be some regulation of the process, and reasonable limitations. Along with its *Motion*, IGWA provided a list of proposed interrogatories. Including the numerous subparts, there are well over 50-interrogatories that IGWA proposes to serve on A&B. “Given the compressed nature of the hearing schedule and the overlap with the Surface Water Coalition delivery call hearing and any appeal of the Thousand Springs delivery call case which involves many of the same counsel,” *IGWA Motion* at 3, as well as the number of parties in this case, the Hearing Officer should limit the number of interrogatories that each party may serve upon a party and that may be outstanding against a party at one time. In this case, each

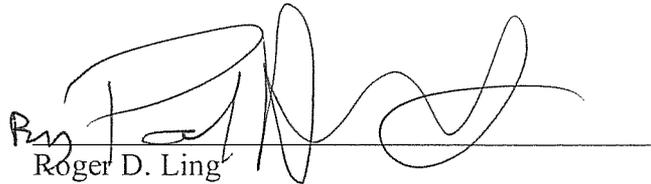
RESPONSE TO MOTION TO AUTHORIZE INTERROGATORIES & NOTICE OF HEARING - 2

ground water appropriator represented by a ground water district and thus by IGWA, is a party. Attached hereto as Attachment A, is a copy of the *Scheduling Order*, issued by then Director Karl J. Dreher on July 22, 2005, in the Surface Water Coalition matter. At page 2 of that *Scheduling Order*, the Director addresses discovery matters. In that *Order*, the Director states that “no more than then (10) interrogatories may be served by one party on another party and be outstanding against that party at any given time.” Given that there are at least 30 parties involved in this matter, some of which do not have any water rights but are representing hundreds of individual water users who have their own water rights that may or may not be subject to A&B’s delivery call, and that the hearing schedule is “compressed,” *IGWA Motion* at 3, similar limitations should be imposed in these proceedings. Such limitations are necessary so as not to prejudice any one party who may be required to serve interrogatories on many individuals, who are representative of IGWA’s member water users and subject to this delivery call, as well as where the other parties could propound multiple and repetitive discovery requests upon a single party, particularly upon A&B.

For the foregoing reasons, the Hearing Officer should authorize the use and service of interrogatories, with the above limitations, for all parties to these proceedings.

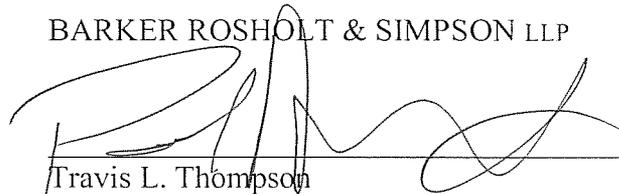
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DATED this 16th day of January, 2008.



Rog
Roger D. Ling
Attorney at Law

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson
Paul L. Arrington

Attorneys for A & B Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 2008, I served the original/ true and correct copies of the foregoing **RESPONSE TO MOTION TO AUTHORIZE INTERROGATORIES & NOTICE OF HEARING**, by the method indicated below, and addressed to the following:

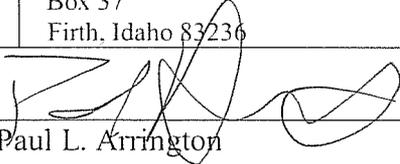
BY EMAIL AND U.S. MAIL

Hon. Gerald F. Schroeder
c/o Victoria Wigle
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098
fcjschroeder@gmail.com
victoria.wigle@idwr.idaho.gov

BY U.S. MAIL

B.J. Driscoll McGrath Meacham & Smith PLLC 414 Shoup PO Box 50731 Idaho Falls ID 83405	Michael Patterson, President Desert Ridge Farms, Inc. PO Box 185 Paul ID 83347
Randall C. Budge Racine Olson Nye Budge & Bailey PO Box 1391 201 E Center Street Pocatello ID 83204-1391	Candice M. McHugh Racine Olson Nye Budge & Bailey 101 S Capitol Suite 208 Boise ID 83702
Todd Lowder 2607 W 1200 S Sterling ID 83210	Neil and Julie Morgan 762 West Hwy 39 Blackfoot ID 83221
Charlene Patterson, President Patterson Farms of Idaho 277 N 725 Lane W Paul ID 83347	William A. Parsons Parsons Smith & Stone, LLP 137 West 13 th Street PO Box 910 Burley ID 83318
A. Dean Tranmer City of Pocatello Box 4169 Pocatello ID 83201	Sarah A. Klahn White & Jankowski LLP 511 Sixteenth Street Suite 500 Denver CO 80202
Winding Brook Corporation 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

James S. Lochhead Michael A. Gheleta Brownstein Hyatt Farber Schreck P.C. 410 Seventeenth Street Suite 2200 Denver, CO 80202	City of Castleford PO Box 626 300 Main Castleford, ID 83321
F. Randall Kline PO Box 397 427 North Main St Pocatello, ID 83204	Larry S. Larson Hopkins Roden Crockett Hansen & Hoopes PLLC PO Box 51219 Idaho Falls, ID 83405-1219
Josephine P. Beeman Beeman & Associates P.C. 409 West Jefferson Street Boise, ID 83702	City of Basalt PO Box 178 Basalt, Idaho 83218
M. Jay Meyers Meyers Law Office PLLC 300 North Seventh Avenue PO Box 4747 Pocatello ID 83205	John J. Hockberger Jr. Kathleen Marion Carr Office of the Field Solicitor U.S. Department of the Interior 960 Broadway Avenue, Suite 400 Boise, ID 83706
LaDell and Sherry R. Anderson 304 N 500 W Paul ID 83347	Denise Glore, Attorney U.S. Department of Energy 1955 Fremont Avenue MS 1209 Idaho Falls, ID 83415-1510
Mary Ann Plant 480 N 150 W Blackfoot, ID 83221	O.E. Feld & Berneta Feld 1470 S 2750 W Aberdeen, ID 83210
Jeff Feld 719 Bitterroot Drive Pocatello ID 83201	Eugene Hruza PO Box 66 Minidoka ID 83343
Jerry Rigby Rigby Andrus and Moeller 25 North Second East Rexburg, ID 83440	Robert E. Williams Fredericksen Williams Meservy & Lothspeich LLP 153 East Main Street PO Box 168 Jerome ID 83338
Gregory P. Meacham McGrath Meacham & Smith PLLC 414 Shoup Idaho Falls ID 83405	Fred & Phyllis Stewart 300 Sugar Leo Road St. George, UT 84790
Richard J. Kimmel 867N 800E Shelley, ID 83274	City of Firth Box 37 Firth, Idaho 83236


Paul L. Arrington

Attachment A

**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.

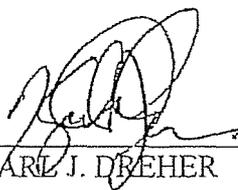
15. On January 30, 2006, the hearing will commence at 9:00 a.m. at the main offices of the Department of Water Resources.

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 20th day of July 2005, the above and foregoing, was served by the method indicated below, and addressed to the following:

TOM C. ARKOOSH
ARKOOSH LAW OFFICES
PO BOX 32
GOODING ID 83330
(208) 934-8873
alo@cableone.net

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

W. KENT FLETCHER
FLETCHER LAW OFFICE
PO BOX 248
BURLEY ID 83318-0248
(208) 878-2548
wkf@pmt.org

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ROGER D. LING
LING ROBINSON
PO BOX 396
RUPERT ID 83350-0396
(208) 436-6804
lnlaw@pmt.org

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOHN A. ROSHOLT
TRAVIS L. THOMPSON
BARKER ROSHOLT
113 MAIN AVENUE WEST, SUITE 303
TWIN FALLS ID 83301-6167
(208) 735-2444
jar@idahowaters.com
ilt@idahowaters.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOHN K. SIMPSON
BARKER ROSHOLT
PO BOX 2139
BOISE ID 83701-2139
(208) 344-6034
jks@idahowaters.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JEFFREY C. FEREDAY
MICHAEL C. CREAMER
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701-2720
(208) 388-1200
cf@givenspursley.com
mcc@givenspursley.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

SCOTT L. CAMPBELL
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701
(208) 385-5384
slc@moffatt.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

KATHLEEN M. CARR
OFFICE OF THE FIELD SOLICITOR
550 WEST FORT STREET MSC 020
BOISE ID 83724
(208) 334-1378

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

MATT HOWARD PN-3130
US BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
1150 NORTH CURTIS ROAD
BOISE ID 83706-1234
(208) 378-5003
mhoward@pn.usbr.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOSEPHINE P. BEEMAN
BEEMAN & ASSOCIATES
409 WEST JEFFERSON STREET
BOISE ID 83702
(208) 331-0954
jo.beeman@beemanlaw.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

SARAH A. KLAHN
WHITE & JANKOWSKI
511 16TH STREET, SUITE 500
DENVER CO 80202
sarahk@white-jankowski.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

MICHAEL S. GILMORE
ATTORNEY GENERAL'S OFFICE
PO BOX 83720
BOISE ID 83720-0010
(208) 334-2830
mike.gilmore@ag.idaho.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

TERRY T. UHLING
J.R. SIMPLOT COMPANY
999 MAIN STREET
BOISE ID 83702
(208) 336-2110
tuhling@simplot.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JAMES C. TUCKER
IDAHO POWER COMPANY
1221 WEST IDAHO STREET
BOISE ID 83702
(208) 388-2112
jamestucker@idahopower.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JAMES S. LOCHHEAD
BROWNSTEIN HYATT & FARBER
410 17TH STREET, 22ND FLOOR
DENVER CO 80202
(303) 223-1100
jlochhead@bhf-law.com

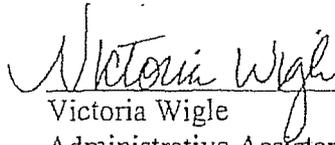
U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

RON CARLSON
LEWIS ROUNDS
IDWR
900 NORTH SKYLINE DRIVE
IDAHO FALLS ID 83402-6105
(208) 525-7177
ron.carlson@idwr.idaho.gov
lewis.rounds@idwr.idaho.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ALLEN MERRITT
CINDY YENTER
IDWR
1341 FILLMORE STREET, SUITE 200
TWIN FALLS ID 83301-3033
(208) 736-3037
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail



Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources