

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

IN THE MATTER OF THE PETITION)	HEARING OFFICER'S
FOR DELIVERY CALL OF A&B)	RESPONSE TO A&B'S
IRRIGATION DISTRICT FOR THE)	PETITION FOR
DELIVERY OF GROUND WATER AND)	CLARIFICATION
FOR THE CREATION OF A GROUND)	
WATER MANAGEMENT AREA)	
_____)	

A&B filed a Petition for Clarification of the Hearing Officer's May 29, 2009, Order on June 12, 2009. IGWA, the City of Pocatello, and Fremont-Madison Irrigation District have responded jointly, challenging the process of filing a Petition for Clarification instead of filing exceptions with the Director or a Petition for Reconsideration. Addressing the Petition in order to assure that the Recommendation process is concluded and that the Director may proceed, the following constitutes the Hearing Officer's response.

In context the finding that there has not been a "total project failure" is a finding of fact, not a measure of material injury. Material injury may occur before a total project failure. It is a finding made because of the extensive evidence offered concerning the nature and operation of the project, not as a threshold requirement before curtailment or mitigation can be sought.

No further clarification of the remaining issues will be made to the Recommendation.

Dated this 19 day of June, 2009.

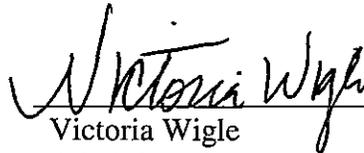

GERALD F. SCHROEDER
HEARING OFFICER

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the attached document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on the 19th day of June, 2009.

Roger D. Ling PO Box 623 Rupert, Idaho 83350	John K. Simpson Travis L. Thompson Barker Rosholt & Simpson 113 Main Ave West, Suite 303 P.O. Box 485 Twin Falls, ID 83303-0485	Gerald F. Schroeder Hearing Officer Boise, ID 83704
City of Firth Box 37 Firth, Idaho 83236	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 Post Office Box 4169 Pocatello ID 83201	Sarah A. Klahn Kelly L. Snodgrass Matthew L. Merrill 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 PC. 410 Seventeenth Street Suite 2200 Denver, CO 80202	City of Castleford PO Box 626 300 Main Castleford, ID 83321
F. Randall Kline PO Box 97 American Falls, ID 83211	Lary 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	Gary L. Cooper Cooper and Larsen 151 North 3 rd Ave – 2 nd Floor P.O. Box 4229 Pocatello ID 83205-4229
Michael D. O'Hagan Office of Chief Counsel U.S. Department of Energy 1955 Fremont Avenue MS 1209 Idaho Falls ID 83415-1510	LaDell and Sherry R. Anderson 304 N 500 W Paul ID 83347	O.E. Feld & Berneta Feld 1470 S 2750 W Aberdeen, ID 83210
Mary Ann Plant 480 N 150 W Blackfoot, ID 83221	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 MEACHAM & DUSTIN, PLLC 2000 Jennie Lee Drive Idaho Falls, ID 83404 Phone: 208/522-0022 Fax: 208/522-0088
Fred & Phyllis Stewart 300 Sugar Leo Road St. George, UT 84790	Richard J. Kimmel 867N 800E Shelley, ID 83274	Steve L. Stephens City of Arco 260 Grand Avenue PO Box 736 Arco, ID 83213



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