

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)
_____)

STATE OF IDAHO)
) ss.
County of Twin Falls)

TRAVIS L. THOMPSON, being first duly sworn upon oath, deposes and hereby states as follows:

1. I am an attorney representing A&B Irrigation District in the above-captioned matter. I am over the age of 18 and state the following based upon my own personal knowledge.

2. Attached hereto as **Exhibit A** is a true and correct copy of the November 10, 2010 letter I sent to Gary Spackman, Interim Director of the Idaho Department of Water Resources (“IDWR”).

3. Attached hereto as **Exhibit B** is a true and correct copy of the January 12, 2011 letter from Chris Bromley, the deputy attorney general that represents Interim Director Spackman and IDWR in this case.

4. Attached hereto as **Exhibit C** are true and correct copies of the orders denying IDWR’s motions for stay in the *Musser v. Higginson* litigation.

5. Attached hereto as **Exhibit D** are true and correct copies of the orders denying IDWR’s motions for stay in the *AFRD #2 v. IDWR* litigation.

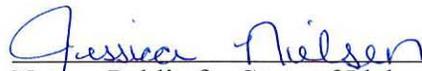
Further you affiant sayeth naught.

DATED this 20th day of January, 2011.



Travis L. Thompson

SUBSCRIBED AND SWORN to before me this 28 day of January, 2011.



Notary Public for State of Idaho

Residing at Twin Falls, Idaho.

Commission Expires: 4/3/12

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of January, 2011, I served true and correct copies of the *Memorandum in Support of Motion to Enforce Orders* upon the following by the method indicated:

Deputy Clerk
Minidoka County District Court
715 G Street
P.O. Box 368
Rupert, Idaho 83350
Fax: (208) 436-5272

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Courtesy Copy:
Hon. Eric J. Wildman
SRBA District Court
253 3rd Ave. North
P.O. Box 2707
Twin Falls, Idaho 83303-2707
Fax: (208) 736-2121

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Garrick Baxter
Chris Bromley
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
garrick.baxter@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

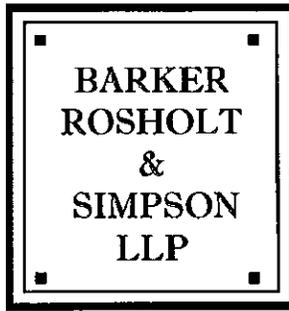
<p>Jerry R. Rigby Rigby Andrus & Rigby Chtd. 25 N 2nd East Rexburg, Idaho 83440 jrigby@rex-law.com</p>	<p>Randall C. Budge Candice M. McHugh Racine Olson P.O. Box 1391 201 E. Center Street Pocatello, Idaho 83204-1391 rcb@racinelaw.net cmm@racinelaw.net</p>	<p>Sarah A. Klahn Mitra Pemberton White & Jankowski LLP 511 Sixteenth Street, Suite 500 Denver, Colorado 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com</p>
<p>A. Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, Idaho 83201 dtranmer@pocatello.us</p>		


Travis L. Thompson

Exhibit

A

*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington
Scott A. Magnuson
Sarah W. Higer*



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Travis L. Thompson
tlt@idahowaters.com

November 10, 2010

VIA U.S. MAIL & EMAIL: gary.spackman@idwr.idaho.gov

Interim Director Gary Spackman
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *A&B Irr. Dist. v. IDWR (Case No. 2009-647) In the Matter of the Petition for Delivery Call of A&B etc.*

Dear Gary:

I am writing on behalf of our client A&B Irrigation District ("A&B") with respect to the above-referenced matter. Judge Wildman issued his *Memorandum Decision and Order on Petitions for Rehearing* last week on November 2, 2010. Judge Wildman denied the petitions for rehearing and affirmed his prior ruling issued on May 20, 2010 ("*Order*").

In his *Order*, Judge Wildman remanded the case to IDWR in order to apply the appropriate evidentiary standard to the existing record in responding to A&B's delivery call. Although the case was pending on rehearing for several months, we have not received any notice that IDWR is preparing a new administrative order on remand. A&B seeks confirmation that IDWR intends to proceed with the remand as ordered by the District Court.

In addition, on the issue of interconnection within the A&B project, Judge Wildman stated:

The Director concluded that A&B must make reasonable efforts to maximize interconnection of the system and placed the burden on A&B to demonstrate where interconnection is not physically or financially practical. The Director did not abuse discretion in imposing such a requirement.

Order at 39.

In his recommended order, Hearing Officer Schroeder stated:

A&B has not undertaken an engineering analysis or other study to determine the feasibility of moving water from a long system to a short system. In light of the manner in which the water right was defined in the license and partial decree it should do so. IDWR should lend whatever expertise it has to that effort.

*Opinion at 19.*¹

Although the Director did not initially request A&B to provide an interconnection feasibility study back in 2007,² A&B is preparing to undertake the study and requests IDWR to lend its expertise as recommended by Hearing Officer Schroeder. A&B understands the scope of the study to be as follows:

- 1) Identify water short areas within the project
- 2) Identify areas where additional water can be diverted and delivered to serve water short areas
- 3) Determine whether obtaining additional water will interfere with existing wells and water supplies
- 4) Identify infrastructure improvements and water conveyance facility needs to move water to water short areas (wells, pumps, pipelines, regulating reservoirs, easements)
- 5) Provide cost estimates and determine feasibility

A&B seeks confirmation that IDWR will assist in the above-referenced study to ensure a complete and adequate record for the Director to make a new injury determination. Please provide any comments on the tasks to be undertaken and information about how IDWR can provide assistance. A&B would be prepared to submit the study by the end of January 2011.

Since time is of the essence for water right administration decisions next year, please advise us as to your intentions regarding the above requests as soon as possible.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

¹ Former Director Tuthill adopted this recommended finding. See *Final Order* at 5.

² See *Order Requesting Information* (November 16, 2007).

Interim Director Spackman
November 10, 2010
Page - 3

cc: Dan Temple (A&B)
Garrick Baxter
Chris Bromley
Randy Budge
Sarah Klahn
Dean Tranmer
Jerry Rigby

Exhibit

B



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

January 12, 2011

Dear Travis:

On November 10, 2010, you asked the Department two questions pertinent to the A&B Irrigation District ("A&B") delivery call. Now that the time for filing notices of appeal has expired, the Department is prepared to answer your questions.

First, because the evidentiary standard of review, which was the subject of Judge Wildman's remand, has been appealed, the Department will not proceed with the remand until a final decision has been issued by the Idaho Supreme Court.

In response to your second question, the Department is willing to field questions A&B may have about its study. However, because the Department is not A&B's technical expert, the Department may limit its involvement depending upon the nature of the questions.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "C. Bromley".

Chris M. Bromley
Deputy Attorney General, IDWR

cc: Dan Temple (A&B)
Randy Budge
Candice McHugh
Sarah Klahn
Jerry Rigby

COPY

Exhibit

C

IT IS ORDERED for the reasons stated in court, the motion is DENIED.

DATED August 30, 1993.



Daniel C. Hurlbutt, Jr.
Presiding Judge
Snake River Basin Adjudication

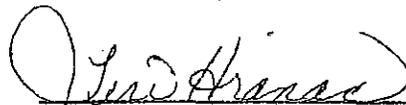
CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER DENYING MOTION TO STAY WRIT OF MANDATE** was mailed on August 30, 1993, in an envelope with sufficient first-class postage to the following:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

Pat Brown
John Lezamiz
Hepworth, Nungester & Lezamiz
P.O. Box 389
Twin Falls, ID 83301

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, Box 33
Boise, ID 83734



Deputy Clerk

In the Supreme Court of the State of Idaho

IN RE THE GENERAL ADJUDICATION)
OF RIGHTS TO THE USE OF WATER FROM)
THE SNAKE RIVER DRAINAGE BASIN)
WATER SYSTEM.)
-----)

ALVIN MUSSER; TIM MUSSER; and)
HOWARD "BUTCH" MORRIS,)

Petitioners-Respondents,)

v.)

R. KEITH HIGGINSON, in his official)
capacity as Director of the Idaho)
Department of Water Resources and)
the IDAHO DEPARTMENT OF WATER)
RESOURCES,)

Respondents-Appellants.)

ORDER DENYING MOTION
TO STAY WRIT OF MANDATE

NO. 20807

Ref. 93S-209

A MOTION TO STAY WRIT OF MANDATE with supporting documents was filed by Appellants September 9, 1993. A BRIEF IN OPPOSITION TO IDWR'S MOTION TO STAY WRIT OF MANDATE with attachments was filed by Respondents September 22, 1993. The Court is fully advised; therefore, after due consideration,

IT HEREBY IS ORDERED that the MOTION TO STAY WRIT OF MANDATE be, and hereby is, DENIED.

DATED this 18th day of October, 1993.

By Order of the Supreme Court

Frederick C. Lyon
Frederick C. Lyon, Clerk

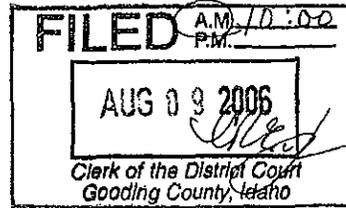
cc: Counsel of Record
District Court Clerk
District Judge Daniel C. Hurlbutt

EXHIBIT C-9

Entered on AFS
By: ll

Exhibit

D



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

AMERICAN FALLS RESERVOIR DISTRICT)
 NO. 2, A & B IRRIGATION DISTRICT,)
 BURLEY IRRIGATION DISTRICT,)
 MINIDOKA IRRIGATION DISTRICT, and)
 TWIN FALLS CANAL COMPANY,)

Case No. CV-2005-600

Plaintiffs-Respondents, and)

ORDER DENYING STAY

RANGEN, INC., CLEAR SPRINGS FOODS,)
 INC., THOUSAND SPRINGS WATER USERS)
 ASSOCIATION, and IDAHO POWER)
 COMPANY,)

Intervenors-Respondents,)

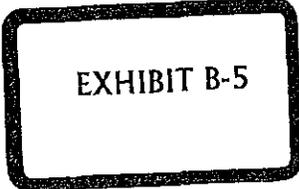
v.)

THE IDAHO DEPARTMENT OF WATER)
 RESOURCES and KARL J. DREHER, its)
 Director,)

Defendants-Appellants, and)

IDAHO GROUND WATER APPROPRIATORS,)
 INC.,)

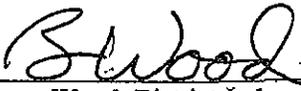
Intervenors.)



Before the Court is the Defendants' Motion for Stay Under IRCP 62(d) and Idaho Appellate Rule 13(b). The Court held a hearing on the Motion on August 8, 2006. The Court, after considering the briefs and arguments presented, and for the reasons stated on the record at the hearing, determines that the Motion is DENIED.

IT IS SO ORDERED.

DATED this 9 day of August, 2006.

Signed: 
Barry Wood, District Judge

Certificate of Mailing

I, Cynthia R. Eagle-Ervin, Deputy Clerk, do hereby certify that the Order Denying Stay was filed on this 9th day of August, 2006, and a true and correct copy was provided to counsel of record this 9th day of August 2006, US Mail, postage prepaid as follows:

C. Tom Arkoosh
Arkoosh Law Offices
301 Main Street
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Gooding, ID 83330

James Lochhead
Adam Devoe
BROWNSTEIN, HYATT & FARBER
410 17th Street, 22nd Floor
Denver, CO 80202

John Rosholt
John Simpson
Travis Thompson
BARKER, ROSHOLT & SIMPSON
P.O. Box 485
Twin Falls, ID 83303-0485

Jeff Fereday
Mike Creamer
GIVENS PURSLEY
P.O. Box 2720
Boise, ID 83701-2720

Roger Ling
LING ROBINSON & WALKER
P.O. Box 396
Rupert, ID 83350

Phillip J. Rassier
Candice McHugh
Deputy Attorney General
Department of Water Resources
P.O. Box 83720
Boise, ID 83702-0098

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, ID 83318

Josephine Beeman
BEEMAN & ASSOC.
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Boise, ID 83702

Dan Steenson
Charles Honsinger
RINGERT CLARK, CHTD
P.O. Box 2773
Boise, ID 83701

Sarah Klahn
WHITE & JANKOWSKI, LLP
Kittridge Building
511 16th Street, Suite 500
Denver, CO 80202

James Tucker
Idaho Power Company
1221 W. Idaho Street
Boise, ID 83702

J. Justin May
MAY SUDWEEKS & BROWNING
P.O. Box 6091
Boise, ID 83707

CLERK OF THE DISTRICT COURT

By: 
Deputy Clerk

In the Supreme Court of the State of Idaho

AMERICAN FALLS RESERVOIR DISTRICT)
 NO. 2, A & B IRRIGATION DISTRICT,)
 BURLEY IRRIGATION DISTRICT,)
 MINIDOKA IRRIGATION DISTRICT, and)
 TWIN FALLS CANAL COMPANY,)

Plaintiffs-Respondents-Cross Appellants,)

and)

RANGEN, INC., CLEAR SPRINGS FOODS,)
 INC., THOUSAND SPRINGS WATER USERS)
 ASSOCIATION, and IDAHO POWER)
 COMPANY,)

V.)

Interveners-Respondents-Cross Appellants,)
 THE IDAHO DEPARTMENT OF WATER)
 RESOURCES and KARL J. DREHER, its)
 Director,)

Defendants-Appellants-Cross Respondents,)

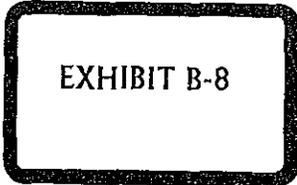
and)

IDAHO GROUND WATER)
 APPROPRIATORS, INC.,)

Intervener.)

ORDER EXPEDITING APPEAL
 DENYING MOTION TO STAY
 SETTING BRIEFING AND ORAL
 ARGUMENT

NO. 33249/33311/33399



The following documents were filed: MOTION TO STAY PENDING APPEAL filed by Appellant Idaho Department of Water Resources on August 17, 2006; MOTION REQUESTING CONSOLIDATED APPEALS filed August 24, 2006; OPPOSITION TO MOTION FOR STAY filed August 30, 2006; MOTION FOR LEAVE TO FILE BRIEF IN SUPPORT OF DEFENDANTS – APPELLANTS’ MOTION FOR STAY filed August 31, 2006; OPPOSITION TO IDAHO DEPARTMENT OF WATER RESOURCES MOTION FOR STAY filed September 5, 2006; A BRIEF IN RESPONSE TO IDAHO GROUND WATER APPROPRIATORS MOTION FOR LEAVE TO FILE BRIEF IN SUPPORT OF

DEFENDANTS – APPELLANTS MOTION FOR STAY was filed September 14, 2006;
OPPOSITION TO IDAHO GROUND WATER APPROPRIATORS MOTION FOR LEAVE
TO FILE BRIEF filed September 18, 2006.

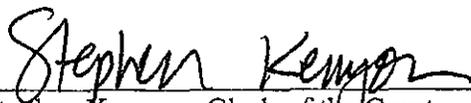
IT IS HEREBY ORDERED THAT Appellant's MOTION FOR EXPEDITED APPEAL is hereby GRANTED. The District Court Clerk shall file the appellate record with the Idaho Supreme Court no later than Wednesday, October 11, 2006. Settlement will take place at the Idaho Supreme Court pursuant to IAR 30.1. The briefing schedule shall be set as follows with each party's briefs bearing all three docket numbers: Appellants' briefs shall be due on or before Friday, October 27, 2006. Respondent – Cross Appellants' briefs shall be due on or before November 10, 2006. Any Appellant – Cross Respondents' reply briefs shall be filed on or before November 20, 2006.

IT IS FURTHER ORDERED that Appellant's MOTION TO STAY is hereby DENIED and this appeal shall proceed as outlined above.

IT IS FURTHER ORDERED that oral argument in this matter shall be set for December 8, 2006 at 11:10 AM in the Supreme Court Building in Boise.

DATED this 27 day of September 2006.

By Order of the Supreme Court


Stephen Kenyon, Clerk of the Court

cc: counsel of record

ORDER– Docket No. 33249