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DEPARTMENT OF
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**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

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| **IN THE MATTER OF THE PETITION FOR DELIVERY CALL OF A & B IRRIGATION DSITRICT FOR THE DELIVERY OF GROUND WATER AND FOR THE CREATION OF A GROUND WATER MANAGEMENT AREA** | ) | **DOCKET NO. 37-03-11-1**<br><br>**MOTION TO PROCEED** |

COMES NOW the petitioner, A & B Irrigation District, and moves the Director to lift the stay agreed to by the parties in regard to the petition of A & B Irrigation District for the delivery of ground water and the creation of a ground water management area, and that said Director proceed, without delay, in the administration of the Eastern Snake Plain Aquifer (ESPA) in such a manner as to provide ground water to A&B under its ground water rights that are being interfered with and materially injured by junior ground water appropriators in the ESPA, on the grounds and for the reasons:

1. That petitioner A & B Irrigation District readopts and incorporates herein its petition for delivery call dated July 26, 1994, as though fully set forth herein.

2. That in the Petition for Delivery Call filed by A & B Irrigation District (A&B) in 1994, it was alleged that by reason of the diversion of water by junior ground water appropriators located within the Eastern Snake Plain Aquifer (ESPA), A&B was suffering material injury caused by the lowering of the ground water pumping level within the ESPA by an average of 20 feet since 1959, with some areas of the ESPA from which A&B diverts water having been lowered in excess of 40 feet since 1959, thereby reducing the diversions of A&B to 974 cfs, a reduction of 126 cfs from the reasonable diversion rate provided by its water right as decreed by the SRBA District Court. That the reduction of the diversion rate as the result of the reduction in the ground water tables had reduced the diversions by A&B from 40 of its 177 wells, serving approximately 21,000 acres to a diversion rate which is less than the minimum required for the proper irrigation of said lands served with water from said wells.

3. On May 1, 1995 R. Keith Higginson, the then Director of the Idaho Department of Water Resources (IDWR) issued his Pre-Hearing Conference Order concerning A&B's Petition for a Delivery Call of Ground Water from the ESPA and for the creation of a Ground Water Management Area. In that Pre-Hearing Conference Order, the Director set forth a proposed stipulation between the petitioner and respondents which provided, among other things, that IDWR adopt and implement an active enforcement plan to eliminate all illegal ground water diversions within the ESPA, all emergency diversions within the ESPA, diversions from ground water under supplemental water rights under certain conditions, the diversion of water under supplemental water rights being used as a new permanent source, under certain conditions, and



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all transfers of supplemental water rights unless transferred with the primary water rights. It further provided that IDWR require measurement of all ground water diversions in the ESPA, including annual volume of water diverted, and a representative tabulation of changes in ground water levels at various times during each year at representative points of diversion in the ESPA. It further provided that said measurements be performed by an entity having authority to assess water right holders, to require the measurement and proper recording of all surface water diversions and to establish a working group consisting of representatives of all parties to evaluate mitigation methods, plans and proposals in the ESPA. The stipulation provided that parties would cooperate in the submission of legislation in the 1995 legislative session authorizing the formation of water measurement districts which would have the power to levy assessments on lands within the district, measure all water diversions and ground water levels within the ground water measurement district (GWMD), require installation of appropriate measuring devices and to contract with existing water organizations to measure water diversions within that district for the benefit of the GWMD. Numerous other provisions were contained in the stipulation which would aid in the proper management of the ESPA.

4. In the Pre-Hearing Conference Order of May 1, 1995, the Director of IDWR ordered that the proposed stipulation set forth therein be adopted in part as the Pre-Hearing Conference Order and that actions called for in the stipulation be accomplished as far as possible using available Department resources, including the development of a plan for management of ESPA, the elimination of drought-related emergency permits to divert ground water from the ESPA, the adoption of Rules to define the term "supplemental water right" and governing the use and transfer of such rights, to continue to fully implement the provisions of §



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42-701, Idaho Code, regarding the measurement and reporting of diversions within the ESPA, to continue the moratorium on new appropriations for surface and ground water from the ESPA, for IDWR to retain jurisdiction of A&B's petition for the purpose of continued review for information concerning water supply, the impact of use of ground water and other uses of the resource and the determination and designation of the ESPA as the ground water management area.

5. The Pre-Hearing Conference Order of May 1, 1995 ordered that action on the petition of A&B be stayed until further notice to the parties and that any party may file a Motion to Proceed at any time to request the stay be lifted.

6. On or about May 1, 1962, A&B submitted to IDWR its resolution of that date, requesting IDWR, then known as the Idaho Department of Reclamation, to make a comprehensive study of the Snake River plains ground water area north of the Snake River as early as possible, in anticipation of the need for the issuance of a Critical Ground Water Area Order as the result of the average decline in 15 observation wells within the A&B Project of 1.3 feet per year and, since 1960, detailed records have established that 7 production wells have shown a decline of approximately 2 feet per year.

7. Approximately 13 years have expired since the filing by A&B of its Petition for Delivery of Ground Water to fulfill its ground water rights, and no management plan has been adopted by the Director for managing the ESPA, and although two ground water management areas were designated in 2001 within the ESPA and later dissolved, no ground water management area has been designated as provided by § 42-233b, Idaho Code, adopted by the Idaho Legislature in 1982, for the entire ESPA. A "ground water management area" is



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defined as any ground water basin or designated part thereof which the Director of the Department of Water Resources has determined may be approaching the conditions of a critical ground water area.

8. On October 7, 1994, the "Rules for Conjunctive Management of Surface and Groundwater Resources" (CM Rules or Rules) were promulgated by the Director of IDWR.

9. The CM Rules provide the procedures for responding to delivery calls "made by the holder of a senior-priority...ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply." The ESPA is a common ground water supply from which A&B and junior water right holders divert water.

10. On March 5, 2007, the Idaho Supreme court filed its Opinion No. 40, in which it found the CM Rules to be constitutional under a facial challenge and that the Rules incorporate Idaho law by reference and to the extent the Constitution, statutes and case law have identified the proper presumptions, burdens of proof, evidentiary standards and time parameters, those are a part of the CM Rules.

11. That in times of shortage, there is a presumption of material injury to a senior by the diversion of a junior from the same source, and the well-engrained burdens of proof. Evidence of a shortage and resulting injury includes:

a. A&B has made major investment in infrastructure and efficiency improvements to remain viable with the shortage caused by declining ground water levels. A&B and it's landowners have invested heavily to increase efficiency and 96.5% of A&B's lands irrigated with ground water are irrigated with sprinklers and A&B has converted conveyance structures in many areas from open lateral to pipeline. A&B has



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been required to upgrade pump and pipe distribution systems, and has been required to increase the size of the pump motors at many wells to provide the power needed to lift ground water from ever-deeper levels. The combined total motor upgrades for all wells is 3,845 hp. A&B has also been required to endure costs from significant alteration of conveyance systems to bring water from new wells into the conveyance system and to decrease conveyance losses. During 1995 through 2006, A&B has expended approximately $152,000 per year for well rectification efforts to divert water from the declining aquifer, and has expended in the years 2002 through 2005, approximately $388,205 per year in drain well rectification, and reductions in operational waste to increase water supplies to meet a part of the shortages occurring as the result of declining ground water tables. Since1980, and primarily since 1994, A&B has made numerous attempts to solve the reduction in ground water irrigation supply caused by declining well yields. A&B drilled 8 new wells to replace wells that would no longer provide an adequate water supply as the result of the lower ground water tables, has deepened 47 wells, has replaced the bowls on 109 pumps in wells that are now pumping from substantially lower water levels, 137 pumps have been lowered to increase their capacity as a result of declining ground water tables, and 7 wells have been abandoned because they no longer provide adequate water. Deepening of wells with declining well yield problems (caused by falling ground water levels) has not provided an appreciable rectification of declining well yield, and since 1994 the total water supply from the A&B wells has declined to 970 cfs. Many of the wells that have been drilled deeper, some to depths of 800 feet, because of the low transmissivity and low well yields deeper in the



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aquifer, do not produce additional water. All of these issues cause A&B to suffer water supply shortages during peak demand periods.

b. From the annual measurement by A&B of approximately 150 of the 177 wells which divert water under Water Right No. 36-02080, it has been determined that there has been a decline since 1999 of over 12 feet in ground water levels over the district, on the average, and a decline of over 22 feet on the average since 1987. Total ground water declines within the district boundaries since the early 1960s generally range between 25 to 50 feet. The trend in ground water declines has become stronger and more pronounced which indicates that the declining ground water level problem is worsening.

c. Diversions authorized under Water Right No. 36-02080 are necessary for the irrigation of lands receiving water under that water right, and the methods of diversion and use are consistent with the irrigation practices for the region, but A&B lands served by ground water diverted under A&B's right continue to suffer significant water shortages, seriously affecting the economic use and employment of farm land within A&B that receive irrigation water from the ESPA for the growing of diverse crops.

d. That the decreed diversion rate under A&B's ground water right is necessary to provide a reasonable quantity for the beneficial use of the water in the irrigation of lands within A&B. Because of the shortages suffered by junior pumping interference and declining ground water levels, A&B is unable to divert an average of 0.75 of a miner's inch per acre which is the minimum amount necessary to irrigate lands within A&B during the peek periods when irrigation water is most needed. A&B was



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able to deliver at least 0.75 of a miner's inch prior to the major impacts caused by junior ground water pumping. Ground water pumping records show that during the mid 1960s A&B was able to pump about 225,000 acre-feet per year. During the last decade, A&B ground water pumping has dropped to as low as 150,000 acre-feet per year. A&B is presently being denied its ability to economically provide adequate irrigation water for lands served with ground water. A&B will continue to suffer water shortages and these shortages will become more severe as ground water levels in the ESPA continue to decline, notwithstanding reasonable efforts by it to divert adequate water from the lower level of the aquifer, until such time as the aquifer level declines are remedied through administration of junior priority ground water rights and the adoption and implementation of a ground water management plan whereby ground water levels may be restored and maintained.

e. That additional effort and expense by A&B to divert the quantity of water to which it is entitled is not economical and would be an unreasonable requirement, and in most instances impossible to obtain as a result of the impacts and injury caused by junior ground water diverters that have created multi-year accumulations of water deficiencies in the ESPA, to serve the senior water rights of A&B.

f. The IDWR, by use of the Eastern Snake River Plain aquifer model that has been developed, can provide technical information that will be useful to the Director in meeting his obligation to delivery water to senior appropriators. One scenario entitled "Sources of Drawdown Beneath the A&B Irrigation District" and the analysis therein indicates that up to 84% of the ground water declines experienced at A&B are due to the





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effects of ground water pumping from others. Other scenarios using the ground water model, such as the "Curtailment Scenario" show that curtailment of junior ground water diversions is an effective management strategy to reduce the declining ground water levels in the aquifer.

g. The ground water supply from the ESPA is not sufficient to meet the water demands of A&B under its senior ground water rights as well as all junior ground water rights within the ESPA. Most of the other ground water diversions, which are depleting the ESPA water supply and reducing the ability of A&B to meet its demand, are primarily diversions by those with junior ground water rights to the water rights of A&B.

h. A&B has no other source or supply of water to replace its lost ground water supply needed to irrigate Unit B land. Even if surface water was available, it would not be economically feasible to deliver such water to the lands now being irrigated with ground water within A&B. To the extent conversion to surface water has been possible, it has been done, being required because of the lack of ground water supplies at any depth to irrigate these lands.

i. That the ground water levels presently existing within the ESPA are below the reasonable ground water pumping level, and A&B is entitled to be protected in the maintenance of reasonable ground water pumping levels established by the Director of IDWR, and the Director should order those water right holders on a time-priority basis, within the areas determined by the Director, to cease and reduce withdrawal of water until such time as the Director determines there is sufficient ground water.



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j. There are no post-adjudication circumstances or unauthorized changes in the elements of A&B's partial decree under Water Right No. 36-02080.

12. There is clear and convincing evidence that the ESPA may be approaching the conditions of a critical ground water area, which is clearly established by the following facts, to-wit:

a. Scientific studies by many agencies show that the ESPA is hydraulically continuous and provides one common water supply to ground water users, spring flow users and natural flow users with varying order of priority. The use of the aquifer by junior ground water pumpers affects all water users dependent on the common water supply of the ESPA. The average annual rate of diversion from the ESPA (including ground water pumping, the discharge from the Thousand Springs area and other springs to the Snake River) has exceeded the average annual rate of recharge, resulting in a decrease in aquifer storage and declining ground water levels.

b. Hydrographs of ground water levels in the ESPA collected since the 1960s show evidence of severe and persistent declines that are not the result of short-term droughts. These declines have become worse as ground water pumping has increased. The declining trend in ground water levels has become worse with every decade since 1960. These hydrographs show that the aquifer is not able to support all of the permitted ground water uses.

c. It is possible to predict the amount of reduction in discharges from the ESPA or the increase in recharge necessary to stabilize the ground water tables at a reasonable pumping level. Analyses have been completed using Version 1.1 of the



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ESPAM Ground Water Flow Model developed by IDWR and IWRRI showing that declining ground water levels, spring flows and the Snake River reach gains can be stabilized by reducing ground water pumping.

d. In the absence of meaningful management, aquifer levels will continue to decline under present conditions, and such declines will cause additional material injury to A&B by decreasing its ground water supply in even greater amounts than now being experienced. This will undermine the entire system of water administration by priority water rights.

e. The ESPA is a ground water basin that is approaching, or has reached, the conditions of a critical ground water area. It is therefore required under Idaho Code § 42-233b that the ESPA, or such designated part thereof, should be designated by the Director as a "ground water management area."

13. That there have been unnecessary delays in the delivery of ground water to petitioner A&B and in taking action to insure future delivery to petitioner A&B of ground water under its valid senior ground water rights.

DATED this 16th day of March, 2007.

LING, ROBINSON & WALKER

By: _____
Roger D. Ling
Attorneys for Petitioner
A & B Irrigation District



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## VERIFICATION

STATE OF IDAHO )
) ss.
County of Minidoka )

Dan Temple, Manager of A & B Irrigation District, being first duly sworn on his oath, deposes and states:

That he is the Manager of A & B Irrigation District, petitioner in the above-entitled matter, that he has read the above and foregoing *Motion to Proceed*, knows the contents thereof, and the facts stated he believes to be true.

Dan Temple, Manager
A & B Irrigation District

SUBSCRIBED AND SWORN to before me this 16th day of March, 2007.

(SEAL)

ROGER D. LING
NOTARY PUBLIC
STATE OF IDAHO

Notary Public for Idaho
Residing at: Rupert, Idaho
My Commission expires: 10-30-2012

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