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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) **AFFIDAVIT OF CHARLES E.**
CREATION OF A GROUND WATER) **BROCKWAY IN SUPPORT OF**
MANAGEMENT AREA) **A&B'S MOTION TO AMEND**
) **HEARING SCHEDULE**
)
)

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

CHARLES E. BROCKWAY, being first duly sworn on oath deposes and states as follows:

1. My name is Charles E. Brockway. I am employed as a principal with Brockway

Engineering PLLC in Twin Falls, Idaho. Brockway Engineering has been retained by the A&B Irrigation District to provide technical evaluations and opinions relating to the Director's January 29, 2008 Order in this matter.

2. I received a copy of the Director's Order in this case from counsel on January 30, 2008. I received a copy of the Department's partial agency record in this case from IDWR on February 11, 2008.

3. I am aware that the present scheduling order in this matter has set February 28, 2008 as a deadline for submission of expert reports and testimony on the Director's Order.

4. Based upon my professional experience, including technical evaluations of the Director's 2005 orders in response to requests for water right administration by Clear Springs Foods, Inc. and the Surface Water Coalition, the present schedule and deadlines for expert reports does not allow sufficient time for review of the partial agency record and further discovery of additional information that has yet to be provided by the Department. My opinion is further based upon the following relative to the Director's Order:

- a. The Order reports a calculation of irrigation diversion requirements based on calculations made by the Director. However, the spreadsheets with the supporting data for the calculations were not provided in the Department's partial agency record produced on February 11, 2008. A&B's experts need additional time to review these calculations once provided through discovery depositions or formal written requests.
- b. The Order reports an evaluation of A&B lands reportedly served by private wells with the assumption that these wells are able to augment A&B's supply. While A&B does not agree with this assumption, A&B needs time to review the data underlying the Director's analysis to determine if any of the cited private wells can actually supply water to A&B lands.
- c. The Order reports on an evaluation of the use of METRIC ET data to evaluate whether a shortage has occurred on lands where A&B has stated that wells need to be upgraded due to falling water levels. The data that this analysis is based on

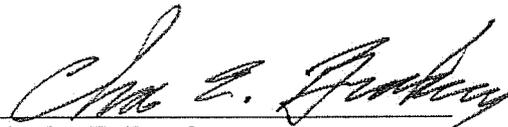
has not been provided and is apparently only available for review at the Department's state office in Boise, Idaho. The index for the partial agency record notes: "Electronic data concerning the GIS Analysis of ET Data is not contained on this disc; however the data is available for inspection at the IDWR office in Boise". A&B's experts need time to inspect and review this data in Boise and identify whether the Director's analysis supports the conclusion.

- d. The Order presents the results of an analysis of area hydrogeology that resulted in development of a hydrogeologic report with newly published cross-sections that previously was not in the public domain. A&B's experts need time to evaluate the newly published hydrogeologic report which was only provided for the first time with the partial agency record on February 11, 2008, less than three weeks from the expert report deadlines previously set in the Hearing Officer's Amended Scheduling Order.
- e. As ground water levels have fallen in A&B's wells, A&B has been required to deepen and/or rehabilitate wells. The Order evaluates drilling methods and well construction methods used by A&B to rehabilitate or deepen wells. The Director uses this information to support the conclusion that A&B's wells and A&B's efforts to deepen wells do not conform to the standard of practice for well drilling and, therefore, the failure of some of A&B's wells to produce adequate water is the fault of A&B. Such conclusions require inquiry into the factual bases for said findings.
- f. The Order presents estimates of 'reasonable' expenses for deepening or rehabilitating wells required to maintain or restore well yields but provides no basis for the cost analysis. The Director concludes that the reported costs by A&B are normal expenses and therefore do not rise to the level of injury. Additional data and time for analysis are required for this effort.
- g. A request was made to IDWR for some additional information and data on which the Order was based. Depositions and additional discovery will likely be required to determine the full extent of data and information utilized and the IDWR personnel who were involved in preparing the order and/or information relied upon.

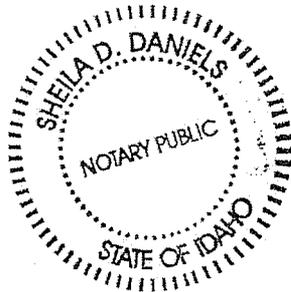
5. As described above, A&B's consultants, including myself, need additional information from the Department to conduct a complete investigation into the methods used by the Director for purposes of offering an opinion on the Order on A&B's behalf.

Further your affiant sayeth naught.

DATED this 19th day of February, 2008.


Charles E. Brockway

SUBSCRIBED AND SWORN to before me on this 19th day of February, 2008.




Notary Public for Idaho
Residing at Kimberly, Idaho
My Commission expires: Aug. 16, 2013

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of February, 2008, I served the original/ true and correct copies of the foregoing, by the method indicated below, and addressed to the following:

BY EMAIL AND U.S. MAIL

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