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 GROUND WATER AND FOR THE CREATION OF A GROUND WATER MANAGEMENT AREA	)	**ORDER SHORTENING TIME TO FILE EXCEPTIONS**

On January 29, 2008, the Director of the Department of Water Resources ("Director" or "Department") issued his order on the A&B Irrigation District ("A&B") delivery call, in which he found that A&B was not suffering material injury in accordance with the Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11 ("CM Rules").

Following a hearing before Gerald F. Schroeder ("Hearing Officer"), a recommended order was issued on March 27, 2009, finding that A&B had not been materially injured in accordance with the CM Rules. *Opinion Constituting Findings of Fact, Conclusions of Law and Recommendations* ("Recommended Order"). A petition for reconsideration was filed to the Recommended Order by A&B and disposed of by the Hearing Officer on May 29, 2009 in his *Order Granting in Part and Denying in Part A&B's Petition for Reconsideration* ("Response Order"). The Response Order corrected two errors in the procedural background and made one editorial change to remove a misleading sentence.

On June 12, 2009, fourteen days after the Hearing Officer issued his Response Order, A&B filed a *Petition for Clarification of the Hearing Officer's May 29, 2009 Order* ("Petition for Clarification"), requesting the Hearing Officer to clarify two determinations in his Response Order regarding reasonable pumping levels and the reference to "total project failure."

On June 15, 2009, IGWA, Pocatello, and Freemont-Madison Irrigation District filed a joint *Response to Petition for Clarification and Request for Director's Order that Deadline to File Exceptions has Expired* ("Joint Response"). The Joint Response requested that the Petition for Clarification be denied and that the Director deem the matter fully before him because A&B failed to file exceptions to the Recommended Order within fourteen days of the Response Order. IDAPA 37.01.01.720.

On June 19, 2009, the Hearing Officer issued his *Response to A&B's Petition for Clarification*. The Hearing Officer clarified the term "total project failure" and took no further action. The proceedings before the Hearing Officer are therefore concluded.

Department Rule of Procedure 720.02.b states that "[w]ithin fourteen (14) days after (a) the service date of this recommended order . . . any party may in writing support or take

exceptions to any part of this recommended order and file briefs in support of the party's position with the agency head . . . ." IDAPA 37.01.01.720.02.b.

Idaho Code § 67-5244 provides the statutory authority for review of recommended orders but sets forth no time limits for the filing of exceptions: "The agency head shall allow parties to file exceptions to the recommended order, to present briefs on the issues, and may allow the parties to participate in oral argument."

Department Rule 52 states: "The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest." IDAPA 37.01.01.052.

On May 26, 2009, after 33 years of service to the Department, the Director announced his retirement, effective June 30, 2009. The Director was responsible for issuing the January 29, 2008 order and its associated findings of fact and conclusions of law. The A&B delivery call is a technically complex matter. A voluminous record was created over the course of an eleven day hearing before the Hearing Officer. The parties have extensively briefed the legal and factual issues before the Hearing Officer. Based on the Director's knowledge of this proceeding and for purposes of economy, it is proper for the Director to review any exceptions that are filed. If the Director were to defer this matter to his successor, it would not provide the parties with a "just, speedy and economical determination of all issues presented to the agency." IDAPA 37.01.01.052.

In accordance with Idaho Code § 67-5244 and Department Rule 52, the Director finds it proper to deviate from the fourteen-day time period set forth in Department Rule 720. The parties are therefore given seven (7) days from the issuance of this order to file exceptions with the Director. To be timely, exceptions must be received and file-stamped by the Department no later than June 26, 2009. Exceptions received after June 26, 2009 will not be considered by the Director.

Dated this 19th day of June 2009.

DAVID R. TUTHILL, JR.
Director

CERTIFICATE OF SERVICE

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

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