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Department of Water Resources

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Roger D. Ling, Esq.
LING, ROBINSON & WALKER
Attorneys at Law
615 H Street
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 1018

Attorneys for Applicant,
A & B Irrigation District

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

IN THE MATTER OF DISTRIBUTION OF WATER)
TO VARIOUS WATER RIGHTS HELD BY OR FOR)
THE BENEFIT OF A & B IRRIGATION DISTRICT)
AMERICAN FALLS RESERVOIR DISTRICT #2,)
BURLEY IRRIGATION DISTRICT, MILNER)
IRRIGATION DISTRICT, MINIDOKA IRRIGATION)
DISTRICT, NORTH SIDE CANAL COMPANY,)
AND TWIN FALLS CANAL COMPANY.)

**REQUEST FOR APPROVAL
OF MITIGATION PLAN OF
A & B IRRIGATION DISTRICT**

COMES NOW A & B Irrigation District, an irrigation district duly formed under
the laws of the State of Idaho, of P. O. Box 675, 414 11th Street, Rupert, Idaho 83350, by and
through its attorney of record, and submits the following proposed Mitigation Plan, to-wit:

1. That pursuant to a letter dated April 22, 2005, addressed to the United
States of America, acting through the USDI Bureau of Land Management, from Cindy Yenter,
Watermaster of Water District 130, which letter ultimately was delivered to the Bureau of

LING, ROBINSON & WALKER
ATTORNEYS AT LAW
RUPERT, IDAHO 83350-0396

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Reclamation and A & B Irrigation District on April 29, 2005, A & B Irrigation District, the equitable owner of the following water rights was advised that it would be required to provide replacement water as mitigation for depletions to flows of the Snake River caused by its ground water pumping pursuant to the Director's Order issued April 19, 2005, in the above-entitled matter. The water rights listed in said letter are:

36-15127B for the irrigation of 1,751.5 acres

36-15193B for the irrigation of 18.9 acres

36-15194B for the irrigation of 152.4 acres

36-15195B for the irrigation of 135.6 acres

36-15196B for the irrigation of 4.7 acres

Total Acres: 2,063.1

2. Said water rights have priorities of April 1, 1984, April 1, 1965, April 1, 1968, April 1, 1978, and April 1, 1981, respectively, subject to an appeal of that priority date and the date of subordination now on file with the Idaho Supreme Court.

3. The 2,063.1 acres covered by the above water rights are entitled to divert four (4) acre-feet per acre each year, or a total of 8,252.4 acre-feet, and the annual consumptive use of water in the irrigation of said 2,063.1 acres is 1.6 acre-feet per acre.

4. A & B Irrigation District presently holds an equitable interest in Water Right No. 01-02064 for the storage of 47,593 acre-feet of water in American Falls Reservoir when the active capacity of American Falls Reservoir is 1.7 million acre-feet, and an equitable interest in Water Right No. 01-02068 for the storage of 90,800 acre-feet in Palisades Reservoir,

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which reservoirs are owned and operated by the United States of America, Department of Interior, Bureau of Reclamation.

5. A & B Irrigation District is the equitable owner of Water Right No. 36-02080, which entitles A & B Irrigation District to divert 1100 cfs from the Eastern Snake Plain Aquifer for the irrigation of 66,683.2 acres, which water right is held in the name of the United States of America, Department of Interior, Bureau of Reclamation.

6. The above water rights are used for the irrigation of lands within A & B Irrigation District pursuant to a contract with the United States of America, Department of Interior, Bureau of Reclamation whereby A & B Irrigation District operates and maintains said project, and is in the process of paying for its landowners the construction costs of the project, including its pro rata share of storage facility construction and all of the operation and maintenance costs of that portion of the project transferred to A & B Irrigation District.

7. A & B Irrigation District has converted 1,377.8 acres irrigated under the above ground water rights to irrigation from surface water using storage water under the storage rights above referred to, which conversion fully mitigates any alleged injury to senior surface water rights or senior ground water rights, as such conversion has reduced the consumptive use of ground water on said acres at the rate of 1.6 acre-feet per acre, for a total savings in consumptive use of ground water in the amount of 2,204.48 acre-feet.

8. The average annual surface water diversion use on the above 1,377.8 acres within A & B Irrigation District that have been converted from ground water to surface water is 3.7 acre-feet per acre per annum. This conversion therefore provides a minimum of 2.1 acre-feet

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per acre, or a total of 2,893.38 acre-feet, of incidental recharge which would not have occurred in the absence of such conversion of ground water use to surface water use, which incidental recharge is sufficient to offset the depletive effect of ground water withdrawal from the Eastern Snake Plain Aquifer for the irrigation of the balance of 685.3 acres subject to the delivery call, which would consumptively use only 1,096.48 acre-feet per annum at the consumptive rate of 1.6 acre-feet per acre.

9. A & B Irrigation District further operates and maintains a system-wide drainage system whereby it recaptures irrigation waste water by its drainage system, which water is used to irrigate more than 2,063.1 acres originally entitled to use ground water from the Eastern Snake Plain Aquifer for irrigation of said lands.

10. The use of irrigation waste water and drain water within A & B Irrigation District provides a replacement water for lands that would otherwise be irrigated with ground water under the water rights of A & B Irrigation District, and such replacement water use is sufficient to offset any depletive effect of ground water withdrawal under the above-described ground water rights at such time and place as is necessary to satisfy the rights of diversion from the ground water source, the Eastern Snake Plain Aquifer. The issue as to whether or not irrigation waste water and drainage water recaptured by A & B Irrigation District is to be treated as ground water or surface water is an issue before the Idaho Supreme Court, waiting decision.

11. Any attempt to curtail the use of recaptured irrigation waste and drain water for the irrigation of lands that otherwise are entitled to be irrigated with ground water from the Eastern Snake Plain Aquifer would be futile, as there is no method by which the use of such

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3 irrigation return flow and waste water can be curtailed, and if such water is not used for irrigation
4 and as a replacement water source, more of the water will be lost by evaporation than will be
5 used consumptively in irrigation with said water. Therefore, the senior-priority surface water
6 rights, including the surface water rights of A & B Irrigation District, because of physical and
7 hydrologic reasons, cannot be satisfied within a reasonable time or at any time by a call for
8 immediately curtailing diversions of irrigation waste water and drain water that would result in
9 waste of the water resource.
10

11 12. Curtailment in the irrigation of lands with ground water under the ground
12 water rights held by A & B Irrigation District, excluding those lands above described whereby a
13 substitute or alternative source of surface water was provided, has occurred for 437.2 acres.

14 These acres are located in the following areas, to-wit:

15 TOWNSHIP 8 SOUTH, RANGE 25 EAST OF THE BOISE MERIDIAN

16 Section 22: Tract A – 125.3 acres

17 Section 21: Tract A – 44 acres

18 TOWNSHIP 8 SOUTH, RANGE 24 EAST OF THE BOISE MERIDIAN

19 Section 15: Tract D – 61 acres

20 Section 3: Tracts G/J – 5 acres

21 Sections 29/32: Tract D – 17.2 acres

22 TOWNSHIP 8 SOUTH, RANGE 23 EAST OF THE BOISE MERIDIAN

23 Sections 11/12/13/14: Tract M – 5 acres

24 Section 13: Tract C – 5 acres

25 Sections 4/5: Tract G – 10 acres

26 Section 26: Tract D – 1 acre

27 TOWNSHIP 9 SOUTH, RANGE 21 EAST OF THE BOISE MERIDIAN

28 Section 5: SE¹/₄ - 160 acres

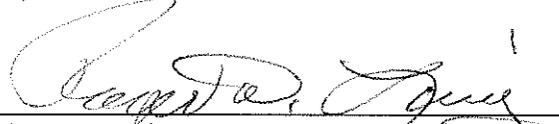
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Curtailment of the irrigation of these lands has occurred for the first time in 2005, or was a continuation of a curtailment that was accomplished and part of the A & B Irrigation District mitigation plan submitted in response to the Rangen Curtailment Order in 2004, and such curtailment is further mitigation in mitigation plans, past or future.

13. The above mitigation plan submitted by A & B Irrigation District, who is the holder of the junior-priority ground water rights above described, identifies actions and measures to prevent holders of senior-priority surface water rights or ground water rights from suffering material injury, regardless of the definition, caused by the diversion and use of water by A & B Irrigation District of ground water within an area having a common ground water supply.

WHEREFORE, A & B Irrigation District requests that the Director fully consider the above mitigation plan and that the mitigation plan be approved in regard to the delivery call above referred to and made in this proceedings by surface water users. It is further requested that in the event more specific information is necessary or desired, A & B Irrigation District requests the opportunity to provide such additional information, including identification of specific location of acres being irrigated with recaptured irrigation waste and drain water and the specific location of the lands formerly irrigated with ground water which are now being provided an alternative source of water from surface water sources.

Respectfully submitted this 12th day of May, 2005.

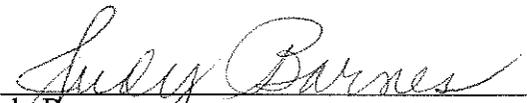
LING, ROBINSON & WALKER
By: 
Roger D. Ling
Attorneys for A & B Irrigation District

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CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of May, 2005, served copies of the foregoing *Request for Approval of Mitigation Plan of A & B Irrigation District* upon the following parties by the method indicated below:

- | | | | |
|---|--|--|--|
| Josephine P. Beeman
Beeman & Associates
409 W. Jefferson
Boise, Idaho 83702
jo.beeman@beemanlaw.com | <input checked="" type="checkbox"/> US Mail, ppd
<input type="checkbox"/> Facsimile
<input checked="" type="checkbox"/> E-mail | Jeffrey C. Fereday
Michael C. Creamer
Givens Pursley, LLP
P. O. Box 2720
Boise, Idaho 83701-2720
jcf@givenspursley.com
mcc@givenspursley.com | <input checked="" type="checkbox"/> US Mail, ppd
<input type="checkbox"/> Facsimile
<input checked="" type="checkbox"/> E-mail |
| C. Tom Arkoosh
Arkoosh Law Offices
P. O. Box 32
Gooding, Idaho 83330
alo@cableone.net | <input checked="" type="checkbox"/> US Mail, ppd
<input type="checkbox"/> Facsimile
<input checked="" type="checkbox"/> E-mail | Scott L. Campbell
Moffatt Thomas
P. O. Box 829
Boise, Idaho 83701
slc@moffatt.com | <input checked="" type="checkbox"/> US Mail, ppd
<input type="checkbox"/> Facsimile
<input checked="" type="checkbox"/> E-mail |
| W. Kent Fletcher
Fletcher Law Office
P. O. Box 248
Burley, Idaho 83318-0248
wkf@pmt.org | <input checked="" type="checkbox"/> US Mail, ppd
<input type="checkbox"/> Facsimile
<input checked="" type="checkbox"/> E-mail | Kathleen Marion Carr
Office of the Field Solicitor
550 W. Fort Street, MSC 020
Boise, Idaho 83724 | <input checked="" type="checkbox"/> US Mail, ppd
<input type="checkbox"/> Facsimile
<input type="checkbox"/> E-mail |
| John A. Rosholt
Travis L. Thompson
Barker, Rosholt & Simpson
113 Main Ave. W., Ste 303
Twin Falls, Idaho 83301-6167
jat@idahowaters.com
tlt@idahowaters.com | <input checked="" type="checkbox"/> US Mail, ppd
<input type="checkbox"/> Facsimile
<input checked="" type="checkbox"/> E-mail | Gail McGarry PN-3100
U S Bureau of Reclamation
1140 N. Curtis Road
Boise, Idaho 83706-1234
emcgarry@pn.usbr.gov | <input checked="" type="checkbox"/> US Mail, ppd
<input type="checkbox"/> Facsimile
<input checked="" type="checkbox"/> E-mail |
| John K. Simpson
Barker, Rosholt & Simpson
P. O. Box 2139
Boise, Idaho 83701-2139
jks@idahowaters.com | <input checked="" type="checkbox"/> US Mail, ppd
<input type="checkbox"/> Facsimile
<input checked="" type="checkbox"/> E-mail | Allen Merritt
Cindy Yenter
Ida. Dept. Water Resources
1341 Fillmore St., Ste 200
Twin Falls, Idaho 83301-3033
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov | <input checked="" type="checkbox"/> US Mail, ppd
<input type="checkbox"/> Facsimile
<input checked="" type="checkbox"/> E-mail |
| | | Michael Gilmore
Ofc of the Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
mike.gilmore@ag.idaho.gov | <input checked="" type="checkbox"/> US Mail, ppd
<input type="checkbox"/> Facsimile
<input checked="" type="checkbox"/> E-mail |



Judy Barnes