

Robert A. Maynard, Bar No. 5537
RMaynard@perkinscoie.com
Erika E. Malmen, Bar No. 6185
EMalmen@perkinscoie.com
PERKINS COIE LLP
1111 West Jefferson Street, Suite 500
P.O. Box 737
Boise, Idaho 83701-0737
Telephone: 208.343.3434
Facsimile: 208.343.3232

Attorneys for Unit A Association

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

**IN THE MATTER OF DISTRIBUTION
OF WATER TO WATER RIGHT NOS.
36-02356A, 36-07210, AND 36-07247**

(Water District 120)

**IN THE MATTER OF THE
MITIGATION PLAN FILED BY A&B
IRRIGATION DISTRICT**

(Blue Lakes Delivery Call)

**UNIT A ASSOCIATION RESPONSE TO
GROUND WATER DISTRICTS' MOTION
TO LIMIT SCOPE OF HEARING AND
PROPOSED SCHEDULE**

Unit A Association ("Unit A"), by and through its counsel of record, PERKINS COIE, LLP, submits this Proposed Schedule and Response to the Ground Water Districts' Motion to Limit Scope of Hearing and Proposed Schedule, and Blue Lakes' Proposed Schedule submitted by electronic mail to the Director.

Unit A is opposed to limiting the scope of the hearing at this time as moved by the Ground Water Districts. Limiting the scope of the hearing to whether A&B's Mitigation Plan is an acceptable method of mitigation is not in conformance with the requirements that must be considered when evaluating a proposed mitigation plan as set forth in Rule 43. IDAPA 37.03.11.043. It is at the least premature to limit the scope of the hearing at this time, in

advance of any motions or determinations in this proceeding regarding legal issues, submittal of written testimony, or potential discovery.

Unit A does, however, support a more detailed hearing schedule to be developed as this matter progresses that will provide the parties advance notice of when certain issues will be heard at hearing. This will allow the parties the option of not attending certain portions of the hearing that may not be relevant to their respective interests.

The Ground Water Districts' Proposed Schedule regarding pre-hearing motions is unnecessary and overly aggressive. Unit A is not necessarily opposed to pre-hearing motions and is open to an Order authorizing *optional* motions to be submitted prior to the hearing. It appears that a hearing on the mitigation plans at issue will occur no matter the result of such motions, and, accordingly, such motions may be duplicative and for this reason should be optional.

Unit A received a copy of an electronic mail message sent from Blue Lakes' counsel to the Director that proposes the following schedule:

1-15-10	Applicants file expert reports and lay testimony
2-12-10	Blue Lakes and protestants file expert reports and lay testimony (including rebuttal)
2-26-10	Applicants file reply testimony
3-15-10	Hearings begin

Unit A supports Blue Lakes' Proposed Schedule with the addition of optional pre-hearing motion and discovery periods. Accordingly, Unit A Proposed Schedule is as follows:


1-01-10 through 3-01-10	Parties serve (optional) and complete discovery
1-15-10	Applicants file expert reports and lay testimony

- 2-12-10 Blue Lakes and protestants file expert reports and lay testimony (including rebuttal)
- 2-26-10 Applicants file reply testimony
- 3-15-10 Hearings begin (all pre-hearing motions must be submitted)

In conclusion, the scope of the hearing should not be limited as the Ground Water Districts move and pre-hearing motions and discovery should be optional. Unit A respectfully requests the Hearing Officer issue an Order adopting the Schedule that Unit A proposes above.

DATED: December 7, 2009

PERKINS COIE LLP

By: 
Robert A. Maynard, ISB No. 5537
Erika E. Malmen, ISB No. 6185

Attorneys for Unit A Association

CERTIFICATE OF SERVICE

I, the undersigned, certify that on December 7, 2009, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Procedure, to the following person(s):

A & B Irrigation District
PO Box 675
Rupert, Idaho 83350-0675

Hand Delivery
U.S. Mail
Facsimile
Overnight Mail
Email

John K. Simpson
Travis L. Thompson
Paul L. Arrington
Sarah W. Higer
BARKER ROSHOLT & SIMPSON LLP
1010 West Jefferson Street, Suite 102
PO Box 2139
Boise, Idaho 83701

Hand Delivery
U.S. Mail
Facsimile (208) 344-6034
Overnight Mail
Email jks@idahowaters.com
tlt@idahowaters.com
pla@idahowaters.com
swh@idahowaters.com

Gary Spackman, Interim Director
Idaho Department of Water Resources
322 East Front Street
PO Box 83270
Boise, Idaho 83720-0098

Hand Delivery
U.S. Mail
Facsimile (208) 287-6700
Overnight Mail
Email victoria.wigle@idwr.idaho.gov
phil.rassier@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

Daniel V. Steenson
Charles L. Honsinger
RINGERT CLARK
PO Box 2773
Boise, Idaho 83701-2773

Hand Delivery
U.S. Mail
Facsimile (208) 342-4657
Overnight Mail
Email dvs@ringertlaw.com
clh@ringertlaw.com

Sarah A. Klahn
WHITE & JANKOWSKI, LLP
511 Sixteen Street, Suite 500
Denver, Colorado 80202

Hand Delivery
U.S. Mail
Facsimile (303) 825-5632
Overnight Mail
Email sarahk@white-jankowski.com

A. Dean Tranmer
City of Pocatello
PO Box 4169
Pocatello, Idaho 83201

Hand Delivery
U.S. Mail
Facsimile (208) 234-6151
Overnight Mail
Email dtranmer@pocatello.us

Randall C. Budge
Candice M. McHugh
RACINE OLSON NYE BUDGE & BAILEY,
CHARTERED
PO Box 1391
Pocatello, Idaho 83204-1391

Hand Delivery
U.S. Mail
Facsimile (208) 232-6109
Overnight Mail
Email rcb@racinelaw.net
cmm@racinelaw.net

William Parsons
PARSONS, SMITH & STONE, LLP
PO Box 910
Burley, Idaho 83318

Hand Delivery
U.S. Mail
Facsimile (208) 878-0146
Overnight Mail
Email wparsons@pmt.org



Robert A. Maynard
Erika E. Malmen