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**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

IN THE MATTER OF THE PETITION FOR ) **DOCKET NO. 37-03-11-1**  
DELIVERY CALL OF A&B IRRIGATION )  
DISTRICT FOR THE DELIVERY OF ) **A&B IRRIGATION DISTRICT'S**  
GROUND WATER AND FOR THE ) **RESPONSE TO IGWA'S MOTION**  
CREATION OF A GROUND WATER ) **FOR PROTECTIVE ORDER**  
MANAGEMENT AREA )  
 )  
 )  
\_\_\_\_\_ )

COMES NOW, A & B Irrigation District ("A&B"), by and through its attorneys of record, and submits this *Response to IGWA's Motion for Protective Order*. For the reasons set forth below, IGWA's motion should be denied.

**RESPONSE**

IGWA's present motion is an attempt to frustrate and prejudice A&B's efforts to discover information from the Idaho Department of Water Resources relative to the

Director's January 29, 2008 Order. As the sole party requesting a hearing on that Order, A&B has, by prior filings, repeatedly notified the parties of the need to discover additional facts from IDWR, particularly from those staff who participated in the preparation of the Order. *See A&B's Petition Requesting Hearing on Director's January 29, 2008 Order* filed on February 13, 2008; *A&B's Request for IDWR to Identify Persons Involved in Preparing the Director's January 29, 2008 Order* filed on February 19, 2008.

In its request to identify IDWR staff, A&B specifically requested available deposition dates for those persons between February 25<sup>th</sup> and April 4<sup>th</sup>. This request was provided to all parties on February 19, 2008, well in advance of the first deposition set to be taken on April 11, 2008. Consequently, all parties, including IGWA, were well aware that A&B intended to depose IDWR staff as soon as possible. After IDWR provided a list of those staff who participated in preparing the Order on March 14, 2008, counsel for A&B contacted counsel for IDWR and obtained a list of available dates for depositions. A&B then sent out *Notices of Deposition* for those staff on April 1, 2008, setting a reasonable schedule of eight depositions over the course of several weeks throughout April and early May, with the first deposition to be conducted on April 11, 2008 and the last one on May 14, 2008. Given the number of depositions to be taken, as well as the availability of IDWR staff and the schedule of A&B's counsel, it was necessary to schedule those depositions on select days over various weeks.

Counsel for various parties objected to proposed schedule, or parts thereof.<sup>1</sup>

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<sup>1</sup> At least two of the depositions, those scheduled for May 7<sup>th</sup> and 14<sup>th</sup> are agreeable to IGWA's counsel. Pocatello's counsel, Ms. Klahn, only objected to the depositions set for April 14<sup>th</sup> and May 1<sup>st</sup>. Counsel for Fremont-Madison Irrigation District, Mr. Rigby, objected to the proposed dates but did not specify which ones. Counsel for Southwest Irrigation District, Mr. Parsons, objected to some of the proposed dates but did not specify which ones. Finally, counsel for the Dept. of Energy, Ms. Glore, objected to the depositions set for April 11<sup>th</sup> and 14<sup>th</sup> and May 1<sup>st</sup>, 7<sup>th</sup>, and 14<sup>th</sup>.

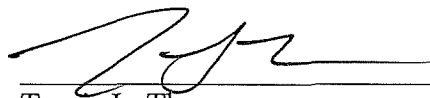
Therefore A&B's counsel proposed to move two of the depositions in order to accommodate those requests. However, IGWA has apparently rejected this reasonable accommodation given its present motion before the Hearing Officer.

Given the upcoming deadline to submit expert testimony in this case on July 16<sup>th</sup>, A&B must conduct depositions of IDWR staff as soon as possible so that it may have a full and fair opportunity to review this information. A&B, unlike any other party in this case, has requested a hearing on the Director's Order and must discover certain facts from IDWR to present its case. In an effort to frustrate A&B's discovery efforts and stall the depositions indefinitely, IGWA has filed its present motion and has objected to any depositions being taken in April due to the schedule of one of its attorneys and its alleged lack of time to review the partial agency record with its consultants that was provided by IDWR two months ago. Although IGWA is represented by multiple counsel in this matter (at least four attorneys), it has not alleged that all of its counsel are unavailable in April or in the alternative that Mr. Budge intends to be present at every deposition. Hence, IGWA's request to vacate the entire deposition schedule prejudices A&B and the presentation of its case in this matter.

The present schedule was set pursuant to the available dates of IDWR staff and provides reasonable notice for any parties seeking to participate. There is no basis to vacate that schedule, therefore IGWA's motion should be denied.

DATED this 8<sup>th</sup> day of April, 2008.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson  
Attorneys for A & B Irrigation District

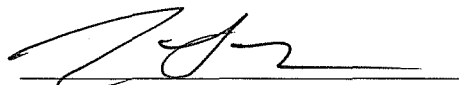
## CERTIFICATE OF MAILING

I hereby certify that on this 27 day of April, 2008, the above and foregoing, was sent to the following by U.S. Mail proper postage prepaid and by email for those with listed email addresses:

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