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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) **DOCKET NO. 37-03-11-1**
DISTRICT FOR THE DELIVERY OF)
GROUND WATER AND FOR THE) **MOTION TO CLARIFY MAY 26,**
CREATION OF A GROUND WATER) **2008 ORDER REGARDING**
MANAGEMENT AREA) **MOTION FOR DECLARATORY**
) **RULING**
)
)
)
_____)

COMES NOW, A & B Irrigation District (“A&B” or “District”), by and through counsel of record, and hereby moves the Hearing Officer pursuant to Rule 770 of the Department’s Rules of Procedure (IDAPA 37.01.01 *et seq.*), for an Order clarifying that the May 26, 2008 *Order Regarding Motion for Declaratory Ruling* is an “interlocutory order” subject to appeal once the

MOTION TO CLARIFY MAY 26, 2008 ORDER REGARDING MOTION
FOR DECLARATORY RULING

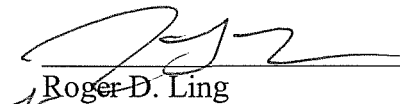
Director issues a final order in this proceeding.

A&B filed an appeal and petition for judicial review of the Hearing Officer's May 26, 2008 *Order Regarding Motion for Declaratory Ruling* ("May Order") in the Cassia County District Court on June 20, 2008 since the May Order did not include a statement identifying whether it was a "preliminary", "recommended", or "final" order of the agency. A&B and IDWR subsequently entered into a *Stipulation for Dismissal and Joint Motion for Order Approving Stipulation and Dismissing Petition Without Prejudice* on July 2, 2008. See Exhibit A. In the *Stipulation*, A&B and IDWR agreed the May Order was "interlocutory" and that A&B had the right to appeal that order once a "final order" was issued by the Director in this proceeding following hearing. Judge Michael Crabtree approved the *Stipulation* by order on July 7, 2008. See Exhibit B. Accordingly, pursuant to the stipulation and Judge Crabtree's order, A&B may appeal the May Order once the Director issues a final order in this matter.


A&B is filing this motion to request the Hearing Officer to clarify the May Order and designate it as "interlocutory" to ensure the record is clear on this matter and that no parties may subsequently argue that the May Order is a "final order" and that A&B would be precluded from appealing that decision at a future date. No hearing is requested on this motion.

DATED this 4th day of September, 2008.

BARKER ROSHOLT & SIMPSON LLP



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John K. Simpson
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CERTIFICATE OF MAILING

I hereby certify that on this 4th day of September, 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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