

**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)	ORDER GRANTING IN PART
FOR THE CREATION OF A GROUND)	AND DENYING IN PART
WATER MANAGEMENT AREA)	A & B'S PETITION FOR
_____)	RECONSIDERATION OF
)	HEARING OFFICER'S OPINION

A & B has filed a Petition for Reconsideration of the Hearing Officer's March 27, 2009, Opinion Constituting Findings of Fact, Conclusions of Law and Recommendations. IGWA and Pocatello have filed Responses and A & B has filed a Reply. The Petition is granted in part and denied in part as set forth in this Order on Reconsideration. Those issues raised in A & B's Petition that are not specifically addressed in this Order are denied, relying on the record and reasoning relied upon in the March 27, 2009, Opinion.

I

ERRORS IN THE PROCEDURAL BACKGROUND

The Recommendation incorrectly cites the Motion to Proceed as having been filed in 2008 whereas the Motion was filed in 2007. Further, A & B correctly notes that the "Committee of Nine" is not a party to this case. These errors are noted and are corrected. Any final Order should reflect these corrections.

II

THE “CATASTROPHIC LOSS” LANGUAGE IN PARAGRAPH 5 IS MISLEADING AND IS DELETED FROM THE RECOMMENDATION.

The use of the term “catastrophic loss” in paragraph 5 is unfortunate, confusing, and does not accurately reflect the standard to be applied in the determination of whether there is material injury. A catastrophic loss is not necessary to establish material injury. Use of the catastrophic loss language constitutes editorial hyperbole, not the standard for material injury. That standard is set forth elsewhere in the Opinion. The following language in the Opinion is deleted: “To date there has not been a catastrophic loss of the ability to pump that has prevented the production of crops....The withdrawal of twenty acres with a significantly reduced yield was not catastrophic to the farming operation.”

III

THE DECREED WATER RIGHT HAS NOT BEEN READJUDICATED

It was not the intent of the Recommendation to either imply or hold that A & B’s decreed water right is reduced or readjudicated. The decreed water right remains. However, at this point when A & B has not been required to exceed reasonable pumping levels to obtain the amount of the decreed right the burden of curtailment or mitigation has not passed to the junior ground water users. This conclusion is supported by the fact that A & B currently utilizes fewer than the number of authorized wells to serve the project.

IV

THE HEARING EXPANDED AND REVEALED INFORMATION BEYOND THAT AVAILABLE TO THE DIRECTOR AT THE TIME THE JANUARY 29, 2008, ORDER WAS ENTERED WHICH SHOULD NOW BE CONSIDERED IN THE FINAL ORDER THAT WILL BE ENTERED.

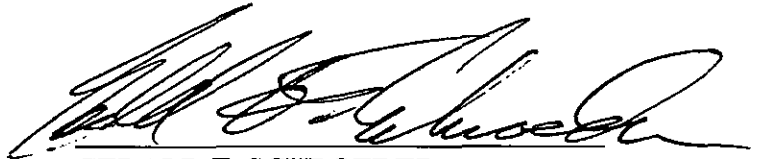
To the extent it is not self-evident that the Director should consider the record developed at the hearing in this matter leading to the Hearing Officer’s Opinion, that record should be considered

and the findings of the Director's Order entered January 29, 2008, reconsidered in light of the additional evidence and the findings in the Hearing Officer's March 29, 2009, Opinion, as amended by this Order.

CONCLUSION

A & B's Petition for Reconsideration is granted to the extent set forth in this Order. The remaining portions of the Petition are denied.

Dated this 29 day of May, 2009.

A handwritten signature in black ink, appearing to read 'Gerald F. Schroeder', written over a horizontal line.

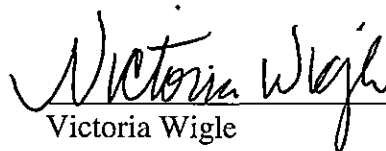
GERALD F. SCHROEDER
HEARING OFFICER

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the attached document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on the 29th day of May, 2009.

Roger D. Ling PO Box 623 Rupert, Idaho 83350	John K. Simpson Travis L. Thompson Barker Rosholt & Simpson 113 Main Ave West, Suite 303 P.O. Box 485 Twin Falls, ID 83303-0485	Gerald F. Schroeder Hearing Officer Boise, ID 83704
City of Firth Box 37 Firth, Idaho 83236	B.J. Driscoll McGrath Meacham & Smith PLLC 414 Shoup PO Box 50731 Idaho Falls ID 83405	Michael Patterson, President Desert Ridge Farms, Inc. PO Box 185 Paul ID 83347
Randall C. Budge Racine Olson Nye Budge & Bailey PO Box 1391 201 E Center Street Pocatello ID 83204-1391	Candice M. McHugh Racine Olson Nye Budge & Bailey 101 S Capitol Suite 208 Boise ID 83702	Todd Lowder 2607 W 1200 S Sterling ID 83210
Neil and Julie Morgan 762 West Hwy 39 Blackfoot ID 83221	Charlene Patterson, President Patterson Farms of Idaho 277 N 725 Lane W Paul ID 83347	William A. Parsons Parsons Smith & Stone, LLP 137 West 13 th Street PO Box 910 Burley, ID 83318
A. Dean Tranmer City of Pocatello Post Office Box 4169 Pocatello ID 83201	Sarah A. Klahn Kelly L. Snodgrass Matthew L. Merrill White & Jankowski LLP 511 Sixteenth Street Suite 500 Denver CO 80202	Winding Brook Corporation C/o Charles W. Bryan Jr. UBS Agrivest LLC PO Box 53 Nampa ID 83653
James C. Tucker Idaho Power Company 1221 West Idaho Street Boise, ID 83702-5627	James S. Lochhead Michael A. Gheleta Brownstein Hyatt Farber Schreck PC. 410 Seventeenth Street Suite 2200 Denver, CO 80202	City of Castleford PO Box 626 300 Main Castleford, ID 83321
F. Randall Kline PO Box 97 American Falls, ID 83211	Lary S. Larson Hopkins Roden Crockett Hansen & Hoopes PLLC PO Box 51219 Idaho Falls, ID 83405-1219	Josephine P. Beeman Beeman & Associates P.C. 409 West Jefferson Street Boise, ID 83702

City of Basalt PO Box 178 Basalt, Idaho 83218	M. Jay Meyers Meyers Law Office PLLC 300 North Seventh Avenue PO Box 4747 Pocatello ID 83205	Gary L. Cooper Cooper and Larsen 151 North 3 rd Ave – 2 nd Floor P.O. Box 4229 Pocatello ID 83205-4229
Michael D. O'Hagan Office of Chief Counsel U.S. Department of Energy 1955 Fremont Avenue MS 1209 Idaho Falls ID 83415-1510	LaDell and Sherry R. Anderson 304 N 500 W Paul ID 83347	O.E. Feld & Berneta Feld 1470 S 2750 W Aberdeen, ID 83210
Mary Ann Plant 480 N 150 W Blackfoot, ID 83221	Jeff Feld 719 Bitterroot Drive Pocatello ID 83201	Eugene Hruza PO Box 66 Minidoka ID 83343
Jerry Rigby Rigby Andrus and Moeller 25 North Second East Rexburg, ID 83440	Robert E. Williams Fredericksen Williams Meservy & Lothspeich LLP 153 East Main Street PO Box 168 Jerome ID 83338	Gregory P. Meacham MEACHAM & DUSTIN, PLLC 2000 Jennie Lee Drive Idaho Falls, ID 83404 Phone: 208/522-0022 Fax: 208/522-0088
Fred & Phyllis Stewart 300 Sugar Leo Road St. George, UT 84790	Richard J. Kimmel 867N 800E Shelley, ID 83274	Steve L. Stephens City of Arco 260 Grand Avenue PO Box 736 Arco, ID 83213



Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources