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*ATTORNEYS FOR FREMONT-MADISON
IRRIGATION DISTRICT*

Attorneys for the City of Pocatello

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

IN THE MATTER OF THE
PETITION FOR DELIVERY CALL
OF A&B IRRIGATION DISTRICT
FOR THE DELIVERY OF GROUND
WATER AND FOR THE CREATION
OF A GROUND WATER
MANAGEMENT AREA

Docket No.: 37-03-11-1

**RESPONSE TO PETITIONER'S
EXCEPTIONS BRIEF AND
REQUEST FOR FINAL ORDER**

The Idaho Ground Water Appropriators ("IGWA"), City of Pocatello, and Fremont-Madison Irrigation District (collectively, the "Respondents") jointly respond to the *Petitioner's Exceptions Brief* ("Petition") filed by A&B Irrigation District on June 26, 2009.

INTRODUCTION

The Respondents ask that the Director deny the relief requested by A&B and issue a final order affirming the Director's *January 29, 2009 Order* and the *March 27, 2009 Opinion Constituting Findings of Fact, Conclusions of Law and Recommendations* both issued in this matter.

A&B's Petition is untimely and should be denied. On March 27, 2009, the Hearing Officer filed his *Opinion Constituting Findings of Fact, Conclusions of Law and Recommendations* ("Opinion") affirming the Director's finding of no injury to A&B water right no. 36-2080 from the pumping of junior ground water rights.

1. On April 10, 2009, A&B Irrigation District filed its *Petition for Reconsideration of Hearing Officer's March 27, 2009 Opinion Constituting Findings of Fact, Conclusions of Law and Recommendations* ("Petition for Reconsideration").
2. On May 29, 2009, the Hearing Officer filed an order denying in part the Petition for Reconsideration.
3. The Hearing Officers' denial of A&B's Petition for Reconsideration required that exceptions be filed with the Director within 14 days after the denial of the petition for reconsideration (by Friday, June 12, 2009). This is in accordance with Rule 720.02.b of the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01.770), which states, in relevant part:

Within fourteen (14) days of the service date of....(b) a denial of a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of [the] recommended order.... If no party files exceptions to the recommended order... the agency head or designee will issue a final order within fifty-six (56) days: ... ii. The service date of a denial of a petition for reconsideration by the hearing officer....

4. However, on June 12, 2009, A&B Irrigation District filed its Petition for Clarification, not exceptions.
5. Thus, on June 12, 2009, A&B might have timely and properly filed exceptions to the Hearing Officer's Opinion and order denying A&B's Petition for Reconsideration. However, A&B failed to do so. A&B waived its right to file

exceptions, as did the Respondents. Therefore, the matter is now pending before the Director to make a final decision and issue a final order.

6. Substantively, A&B's arguments raised in the Petition are inconsistent with the evidence at the hearing, which further bolstered the Department's original conclusion that A&B is not water short and is not suffering material injury.

Therefore, the Director should deny A&B's requested relief.

CONCLUSION

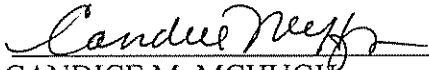
For the reasons identified herein, Respondents request:

- 1) That the Exceptions submitted by A&B be denied.
- 2) That the Director issue a final order affirming the *January 29, 2009 Order*

and the *March 27, 2009 Opinion Constituting Findings of Fact, Conclusions of Law and Recommendations* both issued in this matter.

Submitted this 29th day of June 2009.

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