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*Attorneys for Idaho Ground Water Appropriators, Inc.*

**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 FOR THE  
CREATION OF A GROUND WATER  
MANAGEMENT AREA

**DOCKET NO. CM-DC-2011-001**

**RESPONSE TO CITY OF POCATELLO'S  
MOTION FOR THE DIRECTOR TO  
CONSIDER THE CITY OF  
POCATELLO'S PROPOSED ORDER ON  
REMAND**

IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA") and its Ground Water District members, for and on behalf of their respective members (collectively the "Ground Water Users"), through counsel, and hereby submit the following *Response to the City of Pocatello's Motion for the Director to Consider the City of Pocatello's Proposed Order on Remand*. IGWA supports the City of Pocatello's proposed order and in addition to the findings proposed there, would propose the following findings of fact.

1. A&B is not suffering water shortage as supported by the testimony and evidence of Mr. Bill Kramber regarding evapotranspiration. Kramber Tr. p. 1103 - 1104, and p. 1112, L. 12 - 19 - p. 1113, L. 7 - 12; see also Exhibits 427-10, 427-11, 427-12.
2. This scientific evidence was corroborated by the testimony of IGWA's lay witnesses as well as IGWA's expert witness Dr. Petrich that established that B Unit farmers use higher amounts of water than the surrounding farmers who divert water under their private water

rights. Petrich's Sur-rebuttal at 2-3, 8-9; Stevenson Tr. p. 2068, L. 7 - p.2069, L. 7, p. 2075 L. 11 - p. 2076, L. 8.

3. IGWA's witnesses also testified they irrigate with less than the amount of water claimed by A&B. Deeg, Tr. p. 1067, L. 9 - 1069, L. 11, p. 1070 L. 8-18, p. 1071, L 12-21; Stevenson, Tr. p. 2068, L 12 - p. 2069, L. 7, p. 2074, L. 19 - p. 2075, L. 10, p. 2088, L 2-11, p. 2113, L. 5-21; Carlquist, Tr. p. 2036, L. 14-18, p. 2039, L. 5-16, p. 2040, L 21 - p. 2041, L. 8.; Maughan, Tr. p. 2138, L. 17-p. 2139, L. 13, p. 2138, L. 12-16.
4. Stevenson testified that his farming practices on the B Unit of A&B allows him to "replace water with management" because he can use up to 3 acre-feet per acre on the B Unit for a flat rate and thus has no motivation to use less water. Stevenson, Tr. p. 2102, L. 2-8. By comparison, in his private farming operation which is adjacent to A&B, Mr. Carlquist uses roughly 2 acre-feet per acre as does Mr. Stevenson. Carlquist, Tr. p. 2040, L. 21 - p. 2041, L. 8; Stevenson, Tr. p. 2069, L. 1-7. A&B claimed it needs over 3 acre-feet per acre.

IGWA is contesting the Court's determination that clear and convincing evidence is the proper standard in evaluating material injury in a delivery call; however, it believes that the evidence in this case overwhelmingly supports a finding of no material injury to A&B even under the clear and convincing evidence standard. The evidence shows that A&B is not water-short and not materially injured or suffering any injury to its water right due to junior ground water diversions. For this reason, IGWA joins the City of Pocatello in supporting an order finding that A&B is not materially injured under the clear and convincing standard.

DATED this 29<sup>th</sup> day of March, 2011.

RACINE OLSON NYE BUDGE & BAILEY

By:   
Candice M. McHugh

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of March, 2011, the above and foregoing was served as indicated and addressed to the following:

  
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