

Robert A. Maynard, Bar No. 5537  
RMaynard@perkinscoie.com  
Erika E. Malmen, Bar No. 6185  
EMalmen@perkinscoie.com  
PERKINS COIE LLP  
1111 West Jefferson Street, Suite 500  
P.O. Box 737  
Boise, Idaho 83701-0737  
Telephone: 208.343.3434  
Facsimile: 208.343.3232

Attorneys for Unit A Association

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

**IN THE MATTER OF DISTRIBUTION  
OF WATER TO WATER RIGHT NOS.  
36-02356A, 36-07210, AND 36-07247**

**(Water District 120)**

**IN THE MATTER OF THE  
MITIGATION PLAN FILED BY A&B  
IRRIGATION DISTRICT**

**(Blue Lakes Delivery Call)**

**UNIT A ASSOCIATION RESPONSE TO  
GROUND WATER DISTRICTS' MOTION  
TO LIMIT SCOPE OF HEARING AND  
PROPOSED SCHEDULE**

Unit A Association ("Unit A"), by and through its counsel of record, PERKINS COIE, LLP, submits this Proposed Schedule and Response to the Ground Water Districts' Motion to Limit Scope of Hearing and Proposed Schedule, and Blue Lakes' Proposed Schedule submitted by electronic mail to the Director.

Unit A is opposed to limiting the scope of the hearing at this time as moved by the Ground Water Districts. Limiting the scope of the hearing to whether A&B's Mitigation Plan is an acceptable method of mitigation is not in conformance with the requirements that must be considered when evaluating a proposed mitigation plan as set forth in Rule 43. IDAPA 37.03.11.043. It is at the least premature to limit the scope of the hearing at this time, in

advance of any motions or determinations in this proceeding regarding legal issues, submittal of written testimony, or potential discovery.

Unit A does, however, support a more detailed hearing schedule to be developed as this matter progresses that will provide the parties advance notice of when certain issues will be heard at hearing. This will allow the parties the option of not attending certain portions of the hearing that may not be relevant to their respective interests.

The Ground Water Districts' Proposed Schedule regarding pre-hearing motions is unnecessary and overly aggressive. Unit A is not necessarily opposed to pre-hearing motions and is open to an Order authorizing *optional* motions to be submitted prior to the hearing. It appears that a hearing on the mitigation plans at issue will occur no matter the result of such motions, and, accordingly, such motions may be duplicative and for this reason should be optional.

Unit A received a copy of an electronic mail message sent from Blue Lakes' counsel to the Director that proposes the following schedule:

1-15-10	Applicants file expert reports and lay testimony
2-12-10	Blue Lakes and protestants file expert reports and lay testimony (including rebuttal)
2-26-10	Applicants file reply testimony
3-15-10	Hearings begin

Unit A supports Blue Lakes' Proposed Schedule with the addition of optional pre-hearing motion and discovery periods. Accordingly, Unit A Proposed Schedule is as follows:

1-01-10 through 3-01-10	Parties serve (optional) and complete discovery
1-15-10	Applicants file expert reports and lay testimony

- 2-12-10 Blue Lakes and protestants file expert reports and lay testimony (including rebuttal)
- 2-26-10 Applicants file reply testimony
- 3-15-10 Hearings begin (all pre-hearing motions must be submitted)

In conclusion, the scope of the hearing should not be limited as the Ground Water Districts move and pre-hearing motions and discovery should be optional. Unit A respectfully requests the Hearing Officer issue an Order adopting the Schedule that Unit A proposes above.

DATED: December 7, 2009

**PERKINS COIE LLP**

By:   
Robert A. Maynard, ISB No. 5537  
Erika E. Malmen, ISB No. 6185

Attorneys for Unit A Association

## CERTIFICATE OF SERVICE

I, the undersigned, certify that on December 7, 2009, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Procedure, to the following person(s):

A & B Irrigation District  
PO Box 675  
Rupert, Idaho 83350-0675

Hand Delivery  
U.S. Mail  
Facsimile  
Overnight Mail  
Email

John K. Simpson  
Travis L. Thompson  
Paul L. Arrington  
Sarah W. Higer  
BARKER ROSHOLT & SIMPSON LLP  
1010 West Jefferson Street, Suite 102  
PO Box 2139  
Boise, Idaho 83701

Hand Delivery  
U.S. Mail  
Facsimile (208) 344-6034  
Overnight Mail  
Email jks@idahowaters.com  
tlt@idahowaters.com  
pla@idahowaters.com  
swh@idahowaters.com

Gary Spackman, Interim Director  
Idaho Department of Water Resources  
322 East Front Street  
PO Box 83270  
Boise, Idaho 83720-0098

Hand Delivery  
U.S. Mail  
Facsimile (208) 287-6700  
Overnight Mail  
Email victoria.wigle@idwr.idaho.gov  
phil.rassier@idwr.idaho.gov  
chris.bromley@idwr.idaho.gov

Daniel V. Steenson  
Charles L. Honsinger  
RINGERT CLARK  
PO Box 2773  
Boise, Idaho 83701-2773

Hand Delivery  
U.S. Mail  
Facsimile (208) 342-4657  
Overnight Mail  
Email dvs@ringertlaw.com  
clh@ringertlaw.com

Sarah A. Klahn  
WHITE & JANKOWSKI, LLP  
511 Sixteen Street, Suite 500  
Denver, Colorado 80202

Hand Delivery   
U.S. Mail   
Facsimile (303) 825-5632   
Overnight Mail   
Email sarahk@white-jankowski.com

A. Dean Tranmer  
City of Pocatello  
PO Box 4169  
Pocatello, Idaho 83201

Hand Delivery   
U.S. Mail   
Facsimile (208) 234-6151   
Overnight Mail   
Email dtranmer@pocatello.us

Randall C. Budge  
Candice M. McHugh  
RACINE OLSON NYE BUDGE & BAILEY,  
CHARTERED  
PO Box 1391  
Pocatello, Idaho 83204-1391

Hand Delivery   
U.S. Mail   
Facsimile (208) 232-6109   
Overnight Mail   
Email reb@racinelaw.net   
cmm@racinelaw.net

William Parsons  
PARSONS, SMITH & STONE, LLP  
PO Box 910  
Burley, Idaho 83318

Hand Delivery   
U.S. Mail   
Facsimile (208) 878-0146   
Overnight Mail   
Email wparsons@pmt.org

  
\_\_\_\_\_  
Robert A. Maynard  
Erika E. Malmen