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

)	CM-MP-2009-02
)	
IN THE MATTER OF DISTRIBUTION OF)	MOTION FOR ORDER
WATER TO WATER RIGHT NOS. 36-)	AUTHORIZING DISCOVERY & TO
02356A, 36-07210, AND 36-07247)	SHORTEN RESPONSE DEADLINE
)	
(Blue Lakes Delivery Call))	
)	
_____)	

COMES NOW, A&B IRRIGATION DISTRICT (“A&B”), by and through its counsel of record, BARKER ROSHOLT & SIMPSON LLP, and hereby submits this *Motion for Order Authorizing Discovery*, pursuant to Idaho Department of Water Resources (“Department”) Rule of Procedure 521 (37.01.01.521). In addition, A&B seeks an order shortening the time for responding to A&B’s discovery request so that responses may be received and reviewed for purposes of adequate preparation prior to the hearing presently set for April 7-8, 2010.

Rule 521 provides that “No party before the agency is entitled to engage in discovery unless the party moves for an order authorizing discovery and the agency issues an order authorizing the requested discovery, or upon agreement of all parties to the discovery.” The

Rule further provides that an order authorizing discovery should “provide a schedule for discovery” and that such a schedule “need not conform to the timetables of the Idaho Rules of Civil Procedure.” *Id.*

It was A&B’s understanding that discovery was open in this proceeding when the Director issued the scheduling order on December 22, 2009. The Director held a scheduling conference on November 24, 2009 where the parties were required to be prepared to address a prehearing scheduled including time limits to “complete any authorized discovery”. *See Notice of Scheduling Conference* at 1. The parties submitted proposed hearing schedules, which by IGWA’s own admission, included time “for deposition”. *See Motion to Limit Scope of Hearing and Proposed Schedule* at 4. Pocatello joined in this proposal on December 7, 2009. Accordingly, it was A&B’s understanding that the parties contemplated that discovery would be allowed and built into the hearing schedule.

A&B recently realized that the December 22, 2009 scheduling order did not specifically address or authorize discovery. Notwithstanding, A&B has engaged in discovery with the Unit A Association, exchanging discovery answers and responses. Likewise, on February 24, 2010, A&B submitted *A&B Irrigation District’s First Set of Discovery Requests* on both the City of Pocatello and the Idaho Ground Water Appropriators, Inc. (“IGWA”). These discovery requests, however, were met with objection by both IGWA and Pocatello who, in an email to the Director dated March 8, 2010, asserted that since no formal order of discovery had been issued no discovery was authorized. Rather than engage in, or prolong, a discovery dispute, A&B seeks an order authorizing discovery in this proceeding so that it may discover information relative to the protests filed by IGWA and Pocatello.

In addition, A&B seeks an order shortening the time frame for responding to A&B's discovery requests such that responses to A&B's outstanding discovery requests shall be due on Friday March 26, 2010. An order shortening time is appropriate for at least the following reasons. First, although discovery was not technically authorized at the time, A&B served its discovery requests on Pocatello and IGWA on February 24, 2010. Accordingly, both parties have had notice of the requests since that time. Under Idaho's civil rules, responses to the discovery requests would be due 30 days after service. *See* I.R.C.P. 33(a)(2). A due date of March 26th is 30 days after service of A&B's discovery requests.

Second, Rule 521 specifically authorizes the Hearing Officer to order discovery based on a schedule that does "not conform to the timetables of the" civil rules of procedure. Presently, the hearing on this matter is set for April 7-8, 2010. Shortening the time for responding to A&B's discovery request will allow A&B to receive responses in time for hearing preparation. Since the hearing is set to begin in less than a month, A&B should be allowed to discover the bases of the City's and IGWA's protests in order to adequately prepare for hearing.

Accordingly, for the foregoing reasons, A&B requests the Director to enter an order authorizing discovery and shortening the deadline for response to A&B's outstanding discovery requests to Friday March 26, 2010.

RESPECTFULLY SUBMITTED this 9th day of March, 2010.

BARKER ROSHOLT & SIMPSON LLP



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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2010, the above and foregoing **MOTION FOR ORDER AUTHORIZING DISCOVERY & TO SHORTEN RESPONSE DEADLINE** was sent to the following by e-mail at the listed e-mail addresses:

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