

RECEIVED

OCT 10 2007

DEPARTMENT OF
WATER RESOURCES

Roger D. Ling, ISB #1018
P.O. Box 396
Rupert, Idaho 83350
Telephone: (208) 436-4717
Facsimile: (208) 436-6804

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Petitioner A&B Irrigation District

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

A&B IRRIGATION DISTRICT,)	
)	CASE NO. 07-665
Petitioner,)	
)	
vs.)	AFFIDAVIT OF DAN TEMPLE IN
)	SUPPORT OF BRIEF IN
DAVID R. TUTHILL, JR., in his official)	OPPOSITION TO RESPONDENTS'
capacity as director of the Idaho Department of)	MOTION TO DISMISS
Water Resources, and THE IDAHO)	
DEPARTMENT OF WATER RESOURCES,)	
)	
Respondents.)	

STATE OF IDAHO)
) ss
County of Minidoka)

DAN TEMPLE being first duly sworn on oath, deposes and says:

AFFIDAVIT OF DAN TEMPLE IN SUPPORT OF PETITIONER'S
BRIEF IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

1. I am the Manager of the A&B Irrigation District ("A&B"), the Petitioner in the above-captioned matter. I am over the age of 18 and state the following based upon my own personal knowledge.

2. I previously submitted an affidavit in support of the *Petition for Peremptory Writ of Mandate*. This affidavit detailed the ongoing injury being suffered by A&B's landowners by the Respondents' failure to respond and deliver water to A&B's senior ground water right 36-2080.

3. A&B has no plain, adequate, and speedy remedy at law for the Respondents' failure to respond and deliver water to A&B pursuant to its senior ground water right 36-2080. My affidavit in support of the *Petition for Peremptory Writ of Mandate* details the ongoing harm and injury being suffered by A&B's landowners due to the Respondents' failure to respond and deliver water to A&B under its senior ground water right 36-2080. Filing a damages lawsuit against the Respondents is not a plain, adequate, and speedy remedy at law for A&B because the injury is ongoing and is likely to continue into the future unless the Respondents respond and deliver water pursuant to their statutory duties. In addition, I have been advised that the Director is immune from a damages lawsuit under Idaho Code § 6-904. Accordingly, it is difficult to determine the damages that will occur to A&B's landowners in the future if A&B cannot divert the water it is entitled to pursuant to its senior ground water right 36-2080 due to the shortage of water caused by junior ground water right holders.

4. In addition, the Respondents have failed to take any administrative action from which A&B could file a petition for judicial review. The Respondents have failed to take any

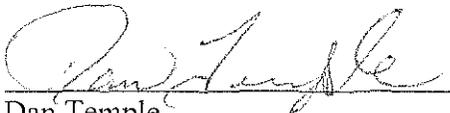
action in response to A&B's call in 2007 and have instead scheduled an administrative hearing that will not begin until March 2008, or the beginning of next year's irrigation season. A&B has no plain, adequate, and speedy remedy at law for arbitrary and unreasonably delays caused by Respondents.

5. I have reviewed the *Affidavit of David R. Tuthill, Jr.* that was filed in this matter. On July 26, 2007 Director Tuthill met with the A&B Board of Directors and myself at the district's main office located at 414 11th St., Rupert, Idaho.

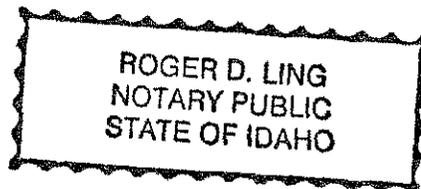
6. Contrary to the Director's impression, the Board of Directors was not satisfied with the Director's response and proposed schedule that was conveyed at the meeting. That is why the Board authorized the filing of this lawsuit.

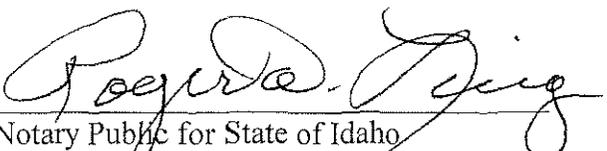
Further your affiant saith naught.

DATED this 9th day of October 2007


Dan Temple

SUBSCRIBED AND SWORN to before me this 9th day of October, 2007.




Notary Public for State of Idaho
Residing at Rupert, Idaho.
Commission expires: 10/30/12

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of October, 2007, I served the foregoing AFFIDAVIT OF DAN TEMPLE IN SUPPORT OF PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS upon the following via U.S. Mail, postage prepaid:

Clive J. Strong
Phillip J. Rassier
John W. Homan
Chris M. Bromley
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

Attorneys for David R. Tuthill, Jr. and
Idaho Department of Water Resources



Roger D. Ling