

SEP 15 2009

DEPARTMENT OF WATER RESOURCES

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**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. CV 2009-647
)	
Petitioner,)	
)	
vs.)	PETITIONER'S STATEMENT OF
)	INITIAL ISSUES
)	
THE IDAHO DEPARTMENT OF WATER)	
RESOURCES and GARY SPACKMAN in his)	
official capacity as Interim Director of the Idaho)	
Department of Water Resources,)	
)	
Respondents.)	
)	
)	
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)	
)	

COMES NOW, the Petitioner A&B Irrigation District ("A&B"), by and through its undersigned counsel, and hereby files this *Statement of Initial Issues* for its *Petition for Judicial Review* previously filed with the Court on August 31, 2009.

STATEMENT OF INITIAL ISSUES

1. The Petitioner intends to assert the following issues on judicial review:
 - a. Whether the Director erred by failing to provide for timely and lawful administration of junior priority ground water rights to satisfy A&B's decreed senior ground water right.
 - b. Whether the Director unconstitutionally applied the Department's Conjunctive Management Rules (IDAPA 37.03.11 *et seq.*) and erred in failing to recognize and honor A&B's decreed senior ground water right by unlawfully shifting the burden of proof to A&B for purposes of administration.
 - c. Whether the Director erred in reducing and re-adjudicating A&B's decreed diversion rate from 0.88 to 0.75 miner's inch per acre and then refused to even find injury to A&B's senior water right based upon wells producing less than that criteria.
 - d. Whether the Director erred in finding A&B is required to take additional measures to interconnect individual wells (points of diversion) or well systems across the A&B irrigation project before a delivery call against junior priority ground water rights can be filed.
 - e. Whether the Director erred in concluding that A&B's senior decreed ground water right with a September 9, 1948 priority date was subject to the provisions of Idaho's Ground Water Act adopted *ex post facto* in 1951 and amended several times thereafter, contrary to the express provisions of the Act which provides that: "This act shall not effect the rights to the use of ground water in this state acquired before its enactment".
 - f. Whether the Director erred in finding that A&B has not been required to pump water beyond a "reasonable ground water pumping level" notwithstanding the evidence in

the record and the fact no objective pumping level has ever been set by IDWR or the Director contrary to the Legislature's directive set forth in Idaho Code § 42-226.

g. Whether the Director erred in failing to designate all or a portion of the Eastern Snake Plain Aquifer as a Ground Water Management Area pursuant to Idaho Code § 42-233b.

h. Whether the Director erred in failing to limit the annual withdrawal of groundwater from the ESPA to the "reasonably anticipated average rate of future natural recharge" pursuant to Idaho Code § 42-237a(g).

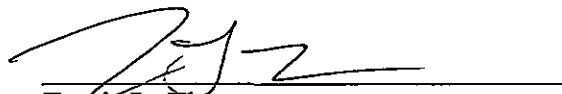
i. Whether the Director abused his discretion in failing and refusing to do all things reasonably necessary or appropriate to protect the people of the state from depletion of ground water resources, including the ESPA, as required by Idaho Code § 42-231.

j. Whether the Director erred by failing to issue a final order in compliance with Idaho Code § 67-5248.

2. Pursuant to I.R.C.P. 84(d)(5), the Petitioner reserves the right to assert additional issues and/or clarify or further specify the issues for judicial review stated herein which become later discovered.

DATED this 14th day of September 2009.

BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

Attorneys for Petitioner A&B Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of September, 2009, I served true and correct copies of the *Petitioner's Statement of Initial Issues* upon the following by the method indicated:

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