

FILED
CASE #

2010 NOV 23 PM 3:20

DUANE
DEPUTY

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

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN in
his official capacity as Interim Director of
the Idaho Department of Water Resources,

Respondents,

and

THE IDAHO GROUND WATER
APPROPRIATORS, INC., THE CITY OF
POCATELLO, FREMONT MADISON
IRRIGATION DISTRICT, ROBERT &
SUE HUSKINSON, SUN-GLO
INDUSTRIES, VAL SCHWENDIMAN
FARMS, INC., DAVID SCHWENDIMAN
FARMS, INC., DARRELL C. NEVILLE,
SCOTT C. NEVILLE, and STAN D.
NEVILLE,

Intervenors,

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

) Subcase No.: 2009-000647

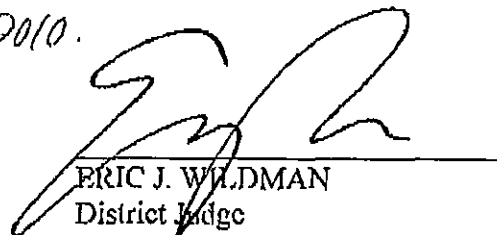
)
) **JUDGMENT**
) **I.R.C.P. 54(a)**

Pursuant to this Court's *Memorandum Decision and Order on Petition for Judicial Review* entered by this Court in the above-captioned matter on May 4, 2010, and ~~this Court's subsequent *Memorandum Decision and Order on Petitions for Rehearing*~~ entered on November 2, 2010,

THE FOLLOWING ARE HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The decision of the Director that the 1951 Idaho Ground Water Act applies to the administration of pre-enactment water rights is **affirmed**.
2. The decision of the Director that A & B Irrigation District was entitled to less water than that decreed to it in the SRBA is **remanded** for the limited purpose of having the Director apply the appropriate evidentiary standard of clear and convincing evidence to the existing record. No further evidence is required.
3. The decision of the Director that A & B Irrigation District has not been required to exceed reasonable pumping levels is **affirmed**.
4. The decision of the Director to evaluate material injury to the 36-2080 water right based on depletion to the cumulative quantity as opposed to determining injury based on depletions to individual points of diversion is **affirmed**.
5. The decision of the Director to require A & B Irrigation District to take reasonable sets to move water from performing to underperforming areas or alternatively demonstrate physical or financial impracticability is **affirmed**.
6. The decision of the Director not to designate the Eastern Snake Plain Aquifer as a Ground Water Management Area is **affirmed**.
7. The Director did not fail to issue a final order in compliance with Idaho Code § 67-5248.

Dated November 23, 2010.


ERIC J. WALDMAN
District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23RD day of November, 2010, she caused a true and correct copy of the foregoing: JUDGMENT on the persons listed below by mailing in the United States mail, first class, thereto to the parties at the indicated address:

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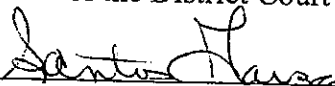
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Clerk of the District Court


Santos Garza, Deputy Clerk