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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, 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.	CASE NO. CV 2011-512 **PETITIONER'S STATEMENT OF INITIAL ISSUES**
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 June 27, 2011.

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 for purposes of administration.

c. Whether the Director erred in finding that A&B could not beneficially use the quantity of its decreed water right for irrigation purposes.

d. Whether the Director erred in not finding material injury to A&B's senior water right because A&B has 11 unused wells or points of diversion "that may be put into production at any time or the wells may be reconstructed at another location."

e. Whether the Director erred in finding that the "inherent hydrogeologic environment" for certain wells represents an unreasonable means of diversion.

f. Whether the Director erred in applying CM Rule 20.03, parts of which have been determined invalid by the Idaho Supreme Court in *Clear Springs Foods, Inc., et al. v. Spackman, et al*, 150 Idaho 790 (2011).

g. Whether the Director erred in forcing A&B to curtail or regulate its 1994 enlargement water rights as a precondition to the administration of other junior water rights.

h. Whether the Director erred in using pre-decree information as a basis to disregard A&B's decreed quantity of 1,100 cfs (0.88 miner's inch per acre).

i. Whether the Director erred in concluding that A&B could divert additional water for irrigation purposes during the peak season.

j. Whether the Director erred in failing to apply CM Rules 20.03 and 40.05 for purposes of evaluating whether junior ground water right holders were "wasting" water.

k. Whether the Director erred in finding that A&B could not beneficially use 0.88 miner's inch per acre even though the Director authorized surrounding water users with junior ground water rights to use 0.88 miner's inch per acre of water, and more.

l. Whether the Director erred in using a "crop maturity" standard for purposes of water right administration.

m. Whether the Director erred by addressing issues that are beyond the scope of the Court's remand order.

n. Whether the Director's decision is supported by substantial evidence in the record.

o. Whether, if A&B's senior water right is subject to the Ground Water Act, the Director erred in refusing to establish a "reasonable ground water pumping level" for purposes of administration pursuant to Idaho Code § 42-226.

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 later become discovered.

DATED this 11th day of July 2011.

BARKER ROSHOLT & SIMPSON LLP

Travis L. Thompson
Attorneys for Petitioner A&B Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of July, 2011, I served true and correct copies of the *Petitioner's Statement of Initial Issues* upon the following by the method indicated:

Deputy Clerk SRBA District Court 253 3rd Ave N. P.O. Box 2707 Twin Falls, Idaho 83303-2707	____ U.S. Mail, Postage Prepaid ✓ Hand Delivery ____ Overnight Mail ____ Facsimile ____ Email
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