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RUPERT, IDAHO 83350-0396

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ISB No. 1018

Attorneys for Petitioner,  
A & B Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DESIGNATING )  
THE AMERICAN FALLS GROUND ) PETITION OPPOSING ORDER  
WATER MANAGEMENT AREA )  
\_\_\_\_\_ )

COMES NOW the petitioner, A & B Irrigation District ("A&B"), an irrigation district duly organized and existing under the laws of the State of Idaho, and in support of its petition for a hearing on the Order of the Director of the Idaho Department of Water Resources ("IDWR") of August 3, 2001, creating the American Falls Ground Water Management Area ("AFGWMA"), alleges:

STANDING OF PETITIONER

1. That A & B Irrigation District is an irrigation district which is the beneficial owner of certain water rights used for the delivery of water to lands within the irrigation district for irrigation.

2. That A & B Irrigation District diverts ground water for delivery to lands within the irrigation district that are located in Township 8 South, Range 25 East of the Boise Meridian,

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3 which is described as a part of the Eastern Snake Plain Aquifer  
4 included by the Director of IDWR in the American Falls Ground Water  
5 Management Area.

6 3. That the static ground water level under the lands  
7 of A & B that are included in the American Falls Ground Water  
8 Management Area is below the bed of the channel of the Snake River  
9 that is located within the "American Falls reach" of the Snake  
10 River.

11 4. That the ground water rights of A & B are used for  
12 the irrigation of over sixty-eight thousand (68,000) acres and said  
13 rights have a priority of September 9, 1948.

14 5. That the Director of IDWR has a responsibility to  
15 exercise his statutory authority to administer rights to the use of  
16 ground water in a manner that recognizes and protects senior  
17 priority ground water rights, but the Director has failed and  
18 refused to exercise the statutory authority to meet this responsi-  
19 bility.

20 6. The curtailment of water in those areas within A & B  
21 that have been included in the American Falls Ground Water  
22 Management Area would cause substantial and immediate injury to  
23 A & B and its landowners located within a portion of the AFGWMA,  
24 which injury would be irreparable and in violation of the water  
25 rights held by A & B for the benefit of its landowners located in  
26 the western portion of the AFGWMA.

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FINDINGS OF FACT

7. That there is no substantial, competent or relevant evidence to support the finding of the Director of IDWR that the ESPA under the lands of A & B included in the AFGWMA has a direct hydraulic connection to the "American Falls reach" of the Snake River in the vicinity of American Falls Reservoir.

8. That IDWR's calibrated computer model of the ESPA has not been calibrated with available data regarding the portion of the ESPA located under the lands of A & B that have been included in the American Falls Ground Water Management Area, and simulations of said model are therefore inaccurate and unreliable, and there is no substantial, competent or relevant evidence which would show that ground water withdrawals within any portion of A & B have or can cause significant reductions in the gains to the reach of the Snake River within the "American Falls reach," within six (6) months or within any other time period after the withdrawals occur.

9. That the IDWR model simulations and analytical calculations fail to consider all available data in regard to ground water withdrawals, ground water tables and flows within the ESPA lying under the lands of A & B that are included in the American Falls Ground Water Management Area, and there is no substantial, competent or relevant evidence to support a finding that consumptive ground water diversions by A & B from the ESPA result in seasonal reach gain reductions equal to fifty percent

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3 (50%) or more of the amount of water diverted and consumptively  
4 used, or that reductions occur within six (6) months of the  
5 diversions or any other time.

6 10. That further ground water studies for the Eastern  
7 Snake River Plain are not necessary to obtain data that is now  
8 available and unused that could be used to further refine and  
9 calibrate IDWR's ground water model to calculate the amount,  
10 location, and timing of surface water depletions, if any, caused by  
11 the withdrawal and use of ground water by A & B Irrigation District  
12 within the area included within the AFGWMA, and by failing and  
13 refusing to refine and calibrate the ground water models used by  
14 IDWR, the simulations relating to ground water diversion by A & B  
15 are unacceptable and unreliable, and as such the simulations do not  
16 provide a suitable basis for making water management decisions such  
17 as the inclusion of a portion of A & B Irrigation District within  
18 the American Falls Ground Water Management Area.

19 11. That IDWR's present ground water model is not  
20 adequately calibrated to predict a direct and significant reduction  
21 in reach gains as the result of ground water diversions by A & B  
22 Irrigation District within that portion of the district located  
23 within the American Falls Ground Water Management Area, and there  
24 is no competent, significant or relevant evidence to support a  
25 finding that reach gains in the American Falls reach are reduced by  
26 an amount equal to fifty percent (50%) or more of the ground water  
27 depletion associated with the ground water diversion of A & B, or

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2 that such reduction occurs within any particular time period, if  
3 any.

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5 12. That the lands of A & B included within the American  
6 Falls Ground Water Management Area are not in close proximity to  
7 the area of the American Falls reach of the Snake River and the  
8 water supply within the American Falls reach of the Snake River is  
9 not reduced as the result of ground water withdrawals by A & B.

10 13. That the water supply in the Snake River in the  
11 American Falls reach is not being reduced by water withdrawals by  
12 A & B within the American Falls Ground Water Management Area  
13 described in the Director's Order of August 3, 2001.

14 CONCLUSIONS OF LAW

15 14. A & B denies that the Idaho law declares all ground  
16 waters in this state to be the property of the State of Idaho.

17 15. A & B denies that there is competent, substantial or  
18 relevant evidence to support the conclusion that the ground water  
19 basin lying beneath the lands of A & B Irrigation District included  
20 in the American Falls Ground Water Management Area may be approach-  
21 ing the conditions of a critical ground water area, without  
22 including the balance of the land included within A & B.

23 16. That the Director has acted beyond his statutory  
24 authority in attempting to establish a ground water management area  
25 which includes lands of A & B Irrigation District for the purposes  
26 of protecting surface water users, and has refused to exercise his  
27 statutory authority to provide water management of ground water

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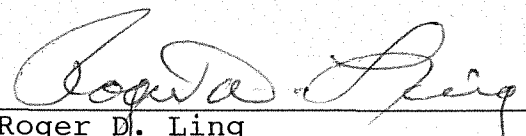
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diversions for the protection of senior ground water rights, and has thus abused his discretion in including any lands of A & B Irrigation District in the American Falls Ground Water Management Area.

WHEREFORE, petitioner prays that a hearing be held, after a reasonable time for completion of discovery as provided by law and required to provide procedural due process to petitioner, and that the Director amend his Order and delete the lands served by A & B from any ground water management area under his Order of August 3, 2001.

DATED this 20<sup>th</sup> day of August, 2001.

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By:   
Roger D. Ling  
Attorneys for Petitioner  
A & B Irrigation District

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CERTIFICATE OF MAILING

I hereby certify that on the 20th day of August, 2001, I served the original of the foregoing **Petition Opposing Order** upon:

Karl J. Dreher, Director  
Idaho Department of Water Resources  
1301 North Orchard Street  
Statehouse Mail  
Boise, ID 83720

and copies of said **Petition Opposing Order** upon:

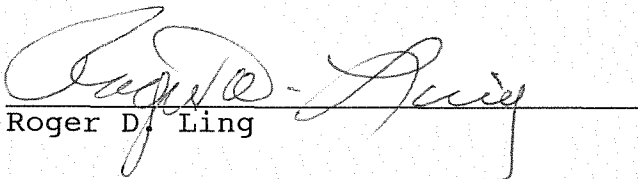
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by depositing said document in the United States mail, postage prepaid, in envelopes addressed to said parties at the foregoing addresses.

  
Roger D. Ling