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MAR 22 2004
Department of Water Resources

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11 Attorneys for Petitioner
12 A & B Irrigation District

13 **BEFORE THE DEPARTMENT OF WATER RESOURCES**
14 **OF THE STATE OF IDAHO**

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IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHT NOS. 36-15501,) **PETITION FOR EXCLUSION**
36-02551, AND 36-07694) **FROM AMENDED ORDER**

A & B Irrigation District (A&B), by and through its attorneys Roger D. Ling and Brian J. Coffey of the firm of Ling, Robinson, and Walker, states and represents to the Director as follows:

COUNT I

1. On March 10, 2004, the Director issued an Amended Order making findings of fact and conclusions of law regarding a call for water by Rangen, Inc. based on Rangen's claim to surface water rights to certain spring flows in the Thousand Springs reach of the Snake River. The order sets out a plan for curtailment of ground water rights in Water District 130 junior to July 13, 1962, unless certain conditions are met regarding mitigation and replacement water.

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ATTORNEYS AT LAW
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2. A&B is an irrigation district duly organized and existing under the laws of the State of Idaho and is the beneficial owner of certain water rights sought to be curtailed by the Amended Order of the Director dated March 10, 2004, described as follows:

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<u>Water Right</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acre Limit</u>	<u>Source of Water</u>
36-15127B	4/1/1984	28.89 cfs	7006.0 af	1751.5 ac	Ground, drain&waste
36-15193B	4/1/1965	.31 cfs	75.6 af	18.9 ac	Ground, drain&waste
36-15194B	4/1/1968	2.51 cfs	609.6 af	152.4 ac	Ground, drain&waste
36-15195B	4/1/1978	2.24 cfs	542.4 af	135.6 ac	Ground, drain&waste
36-15196B	4/1/1981	.08 cfs	18.8 af	4.7 ac	Ground, drain&waste
Total		34.03 cfs	8252.4 af	2063.1 acres	

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3. A&B recaptures irrigation wastewater from lands within the District, and additional surface runoff from lands within and outside the District, in its drain water collection system.
4. That recaptured drain water is reused by A&B to irrigate the 2063.1 acres within A&B, to which the above rights are appurtenant.
5. This reuse of drain water provides additional incidental recharge to the aquifer and avoids any injury to other water rights, including the rights sought to be protected by the curtailment order.
6. The drain water arises as a result of reasonable diversion and irrigation practices and its use cannot and should not be curtailed.
7. It is futile to curtail the use of drain water in the irrigation of the 2063.1 acres

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described in paragraph 2 above for the reason that if said water is not used, it would not reach or contribute to spring flows sought to be protected by the Director's Order. See, Gile v. Laidlaw, 52 Idaho 665, 20 P 2d. 215 (1933); Jackson v. Cowan, 33 Idaho 525, 196 P.2d 216 (1921); and Neil v. Hyde, 32 Idaho 576, 186 P. 710 (1920).

COUNT II

1. A&B adopts and incorporates herein as though fully set forth paragraphs 1 and 2 of Count I.
2. All of the ground waters of the ESPA contribute to Springs in the reach where Rangen's rights to divert are located.
3. The Director has failed to curtail water rights to the groundwater of the entire ESPA that are junior to petitioner's rights.
4. Acts of the Director are contrary to the law as in such cases provided above in paragraph 7 of Count I, and the order of March 10, 2004 should be amended to curtail all junior ground water diversions in the ESPA or be withdrawn.

COUNT III

1. A&B currently irrigates 1418 acres within the district with stored water of the District that have appurtenant groundwater rights with a priority date of 1948..
2. A&B has converted the source of water supply from groundwater to stored

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surface water for the reason that sufficient ground water is not available from the ESPA to irrigate these lands.

3. A&B diverts approximately 4254 acre feet of water from the Snake River for the irrigation of 1418 acres previously irrigated with groundwater.
4. Of the surface water diverted, only a portion is consumptively used and the balance drains into the ESPA resulting in **incidental recharge of 3332.3 acre feet** of water (1418 acres x 2.35 acre feet per acre).
5. In addition to the incidental recharge created by the use of surface water rather than groundwater, A&B also has **stopped diverting 4254 acre feet** of groundwater, resulting in the recharge to the aquifer of **7586.3 acre feet** of groundwater.
6. The above conversion of groundwater diversions to surface water diversions constitutes mitigation for the consumptive use of water in the irrigation of the 2063.1 acres under the water rights described in paragraph 2 of Count I, and which are sought to be held subject to curtailment by the Order of the Director.

Wherefore, A&B prays for the following relief:

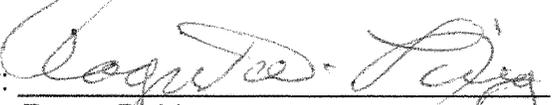
1. That A&B be wholly excluded from the Amended Order of the Director of March 10, 2004;
2. That none of A&B's groundwater rights listed in Count I be curtailed by reason of the mitigation set forth above;

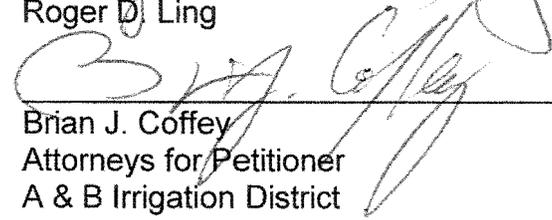
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- 3. That the Director accept and approve the mitigation by A&B as full mitigation for any injury claimed by any other user regarding A&B's ground water rights listed above in Count I;
- 4. That the director adopt and approve the use of drain water set forth above as a valid and reasonable use under water rights that are not subject to curtailment by the Order of the Director;
- 5. That the Director and the Department manage the ESPA for the benefit of A&B as well as other appropriators;
- 6. That any curtailment order of the Director or the Department be amended to provide that any curtailment of groundwater rights in the ESPA will be carried out against junior appropriators in order of seniority among the class of juniors from least senior to most senior;
- 7. That no curtailment be applied against any water rights of A&B until curtailment of all users junior to A&B has been completed;
- 8. For such further relief as may be requested at the time of hearing in this matter.

DATED this 18th day of March 2004.

Ling, Robinson, and Walker

By: 
 Roger D. Ling


 Brian J. Coffey
 Attorneys for Petitioner
 A & B Irrigation District

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CERTIFICATE OF MAILING

I hereby certify that on the 18th day of March 2004, I served the original of the foregoing **Petition for Exclusion from Order** upon:

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

and copies of said **Petition for Exclusion from Order** upon:

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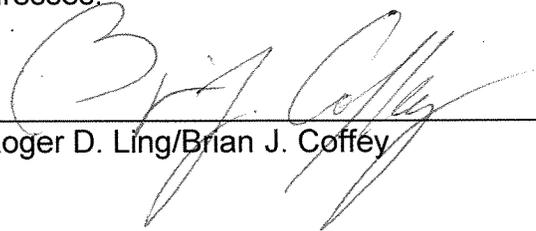
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by depositing said document in the United States mail, postage prepaid, in envelopes addressed to said parties at the foregoing addresses.



Roger D. Ling/Brian J. Coffey