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Attorney for A & B Irrigation District
and Burley Irrigation District

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

IN THE MATTER OF DISTRIBUTION OF)
WATER TO VARIOUS WATER RIGHTS)
HELD BY OR FOR THE BENEFIT OF)
A & B IRRIGATION DISTRICT, AMERICAN)
FALLS RESERVOIR DISTRICT #2, BURLEY)
IRRIGATION DISTRICT, MILNER)
IRRIGATION DISTRICT, MINIDOKA)
IRRIGATION DISTRICT, NORTH SIDE)
CANAL COMPANY, and TWIN FALLS)
CANAL COMPANY)

AFFIDAVIT OF DAN TEMPLE

STATE OF IDAHO)
) ss.
County of Minidoka)

DAN TEMPLE, being first duly sworn, deposes and says:

1. That this affiant is over the age of 21 years and makes this affidavit based upon my personal knowledge.
2. I am the manager of A & B Irrigation District ("A&B") and I have held this

AFFIDAVIT OF DAN TEMPLE

position since 1997.

3. My duties as manager of A&B include, among other things, to make an annual assessment of the A&B's water supply that will be available during each irrigation season and to advise the Board of Directors of A&B as to the quantity of water predicted to be available for delivery in times of shortage and the amount to be allocated to each acre within the irrigation district being irrigated with surface water. I also must predict the amount of carry-over that may be anticipated for use in future irrigation seasons, as well as the preparation of curtailment orders on the delivery to landowners within the irrigation district for consideration by the Board of Directors of A&B when water supplies appear to be inadequate to provide a full water supply to each landowner of the District for the purposes of irrigating crops planted and being grown by said landowners.

4. A&B holds various surface water rights to waters of the Snake River in the name of the United States of America and in its own name. These water rights include the following:

Natural Flow Water Rights

Water Right No. 01-00014
Priority Date: April 1, 1939
Diversion Rate: 267 cfs

Water Right No. 01-10237 through 01-10240
Priority Date: July 11, 1968
Diversion Rate: 2.23 cfs

TOTAL: 269.23 cfs

Storage Space:

Water Right No. 01-02064
Priority Date: March 30, 1921
Diversion Rate: 47,593 acre-feet in American Falls Reservoir

Water Right No. 01-02068
Priority Date: July 28, 1939
Diversion Rate: 90,800 acre-feet in Palisades Reservoir

TOTAL: Storage of 138,393 acre-feet when storage space is full

5. Under the Director's *Amended Order* of May 2, 2005 and his *Fifth Supplemental Order Amending Replacement Water Requirements Final 2006 and Estimated 2007* dated May 23, 2007, the Director relied upon a finding by his predecessor Director that the minimum full supply required by A&B would be that supply required in 1995.

6. To rely upon A&B's minimum full supply of water determined by the year 1995 use, which was established as the result of a significant and unusual period of precipitation during the irrigation season, fails to recognize that the diversion authorized by the District's water rights establish the required amounts to provide, when needed, as the necessary supply of water to provide to landowners within the irrigation district for the growing of crops during the irrigation season. This affiant has observed and clearly understands that crop yields are severely diminished in any year in which a full supply of water is not available when needed to insure proper irrigation of the crops. As a result, the entire natural flow of water from the Snake River under the water rights of A&B are historically diverted and beneficially used in the irrigation of crops of landowners included within the irrigation district, and shortages have been provided by storage water supplies that accrued and, in part, by those supplies that have been carried over from year to

year, which storage supplies can and have been less than the supply needed to provide a full supply from time to time.

7. When there is a shortage of water in the Snake River to fill the water rights for natural flow and storage held by or for the benefit of A&B, landowners within the irrigation district are required to curtail diversions involuntarily, through the alteration of cropping patterns when the shortage is clearly identified prior to the commencement of the irrigation season, and by using less than a full supply to provide some but an inadequate amount of water to meet the needs of the crop being grown.

8. As established by the records of Water District 1 assimilated from water delivery measurements, A&B had a total diversion in 1995 of 49,950 acre-feet, 21,957 acre-feet of which was natural flow. In that year, 6,869 acre-feet had been diverted and used by the 15th day of June. In 2001, 63,229 acre-feet of water was diverted by A&B for irrigation of crops of landowners within the irrigation district, 1,303 acre-feet of which was from natural flow. By June 15, 2001, A&B had diverted 21,943 acre-feet. In 2007, A&B as of June 15, 2007 has diverted 20,223 acre-feet, 2,741 acre-feet of which came from natural flow. It is projected that A&B will be required to divert a minimum of 63,000 acre-feet of water for use by its landowners during the 2007 irrigation season.

9. The storage rights to store water in Palisades Reservoir is the most junior storage right on the Snake River, and it is not uncommon for the space allocated to A&B in Palisades Reservoir to receive no new storage water in years of low flows. This failure to accumulate new storage in Palisades Reservoir is exasperated and contributed in large part to the

need of many water users using Snake River water to use storage water to make up for reduced natural flows to which they would otherwise be entitled, thereby causing new storage to go to those reservoirs with the earlier priority and depriving any new storage water to reservoirs such as Palisades Reservoir.

10. Even in years of high carry-over, as occurred after the 2006 irrigation season, the storage space of A&B in American Falls and Palisades Reservoirs has failed to fill. If that space had filled, A&B would have 138,393 acre-feet of storage water allocated to it. Instead, its allocation for 2007 from these two reservoirs is only 117,177 acre-feet. Assuming that 63,000 acre-feet of this allocated storage is necessary to meet natural flow deficits and to provide the supplemental water necessary for landowners within A&B in 2007, A&B will have 54,177 acre-feet of carryover, less evaporation. Approximately 25% of the water needed to deliver a full supply to landowners within the irrigation district is provided by Palisades Reservoir storage water. In normal years, American Falls Reservoir storage fills, or comes very close to filling, providing the District with its full allocation of stored water, less any restrictions that may be imposed on the reservoir. The balance of the irrigation district's needs must come from Palisades Reservoir water, which in many years does not receive new storage. Because of this water supply of A&B, replacement water in times of shortage caused by the ground water pumping of junior appropriators is not water that adequately mitigates this diversion out of priority. Under the water accounting rules of Water District 1, approved by the Idaho Department of Water Resources, any replacement water provided to A&B in any year will be deemed to be the first water used. This would result in carryover in American Falls Reservoir storage in those years when the replacement water and

storage water allocated from American Falls Reservoir exceeds the storage water use in that year. Carryover water in American Falls Reservoir is normally lost, as it is no longer credited to the account of the spaceholder when the reservoir fills. To insure that A&B receives full credit for replacement water that may be required to be provided in mitigation for the diversion by junior ground water pumpers, it is absolutely necessary that such replacement water be allocated to and placed in the space of A&B in Palisades Reservoir. Only by such an accounting would A&B be assured that replacement water is not lost by requiring carryover to be held in American Falls Reservoir.

11. Although A&B appears to have a sufficient water supply, through its storage, to delivery a full water supply to its landowners for irrigation, it is also likely that because of the high temperatures and low precipitation being experienced, diversion of water by junior appropriators in 2007 will have substantial impacts upon the natural flows and new storage in future years, commencing in 2008. Without some assurance that the water diverted in 2007 by junior appropriators is fully mitigated, mitigation will be impossible in later years when there is no ready supply of water.

12. This affiant, from experience and knowledge, concurs with the finding of the Idaho State Legislature in Idaho Code § 42-273ag when it determined that: "Water in a well shall not be deemed available to fill a water right therein if withdrawal therefrom of the amount called for by such right would affect, contrary to the declared policy of this act, the present or future use of any prior surface or ground water right . . . , in the absence of a program which will increase recharge or decrease withdrawals to bring ground water withdrawals into balance with recharge."

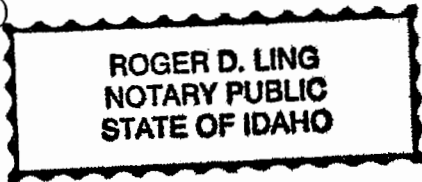
FURTHER THIS AFFIANT SAITH NAUGHT.

Dan Temple
Dan Temple

SUBSCRIBED AND SWORN to before me this 27th day of June, 2007.

Roger D. Ling
Notary Public, in and for the State of Idaho
Residing at: *Rupert, Idaho*
My Commission expires: *10/30*

(SEAL)



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 2007, I caused to be served the original and true and correct copies, as applicable, of the foregoing AFFIDAVIT OF DAN TEMPLE by the method indicated below, and addressed to each of the following:

The original, via email and U.S. mail:

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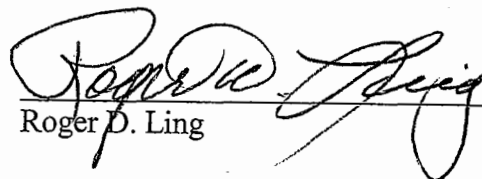
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