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 JAN 14 2008
 DEPARTMENT OF
 WATER RESOURCES

Attorneys for Idaho Ground Water Appropriators, Inc.

**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)
 _____)

**JOINT MOTION TO STRIKE PREFILED
 LAY TESTIMONY OF SURFACE WATER
 COALITION AND
 MEMORANDUM IN SUPPORT**

MOTION

Idaho Ground Water Appropriators, Inc. (“IGWA”) by and through counsel and on behalf of its members, and the City of Pocatello (“City”), by and through counsel, hereby jointly move the Hearing Officer to strike certain portions of the prefiled lay testimony submitted by the Surface Water Coalition (“Coalition”). The exact testimony to be stricken and the grounds therefore are identified below and within the “Table of Inadmissible Evidence” attached hereto. This motion is made upon the grounds and for the reasons (a) that the identified lay testimony

was not properly disclosed in violation of the applicable scheduling orders; and/or (b) that it constitutes expert testimony for which no foundation has been provided and for which the lay witnesses are not qualified to testify; and/or (c) that it constitutes inadmissible hearsay, all in violation of Rule 600 of the Departments Rules of Procedure, IDAPA 37.01.01.600 and the Idaho Rules of Evidence (IRE).

SUPPORTING MEMORANDUM

FACTS AND BACKGROUND:

1. On July 22, 2005, the Director entered the initial Scheduling Order in this matter (“2005 Scheduling Order”) which set various deadlines for expert testimony, lay testimony, discovery and hearing date. The 2005 Scheduling Order required in paragraph 3 that **“the parties shall also submit a report giving the general basis of each witness’ testimony, other than expert witnesses.”** The current hearing and associated deadlines were set in the August 1, 2007 Order Approving Stipulation and Joint Motion for Rescheduled Hearing (“2007 Scheduling Order”). When IGWA recently argued that the previous 2005 Scheduling Order was superceded by the 2007 Scheduling Order in its motion to compel discovery, the Coalition successfully argued that the 2005 Scheduling Order was in place. Thus, the Coalition’s lay testimony is inadequate insofar as it discloses matters and individuals that were not disclosed in conformity with the July 2005 Scheduling Order.

2. On August 19, 2005, under the 2005 Scheduling Order, the Coalition entities submitted separate reports that set forth the general basis of witness testimony, identifying lay witnesses and summarizing their testimony. The identified and disclosed lay witnesses included: Lynn Harmon, Walt Mullins, Ted Diehl, Vince Alberdi, Dan Temple and Randy Bingham. The nature of the testimony of these witnesses was reported as “water delivery

operations,” the entity’s “water supply,” “water rights,” “water diversion records,” water use, “water delivery,” “irrigation requirements,” “crops,” “effects of water shortages for landowners,” “costs,” “conservation methods,” “amounts of water,” “users responses and concerns,” “amount of water necessary and useful,” “cumulative effects of depletion,” “operation difficulties,” and the “importance” of storage rights all within the context of being lay witnesses and managers of the respective canal companies and irrigation or reservoir districts. These lay witnesses have never been identified or disclosed by Coalition as expert witnesses in this matter. Copies of the Coalitions disclosures are attached.

3. On November 14, 2007, the Coalition listed their lay witnesses but did not provide any information regarding the nature and substance of their testimony beyond that set forth in the August 19, 2005 disclosures discussed above. On January 4, 2008, the Coalition submitted their pre-filed lay witness testimony. However, as discussed more fully below, the prefiled testimony far exceeds the scope of Coalition’s previously disclosed summary of the lay witnesses’ testimony and also includes testimony of an expert nature for which no foundations provided and the witness is incompetent and/or based on heresay.

4. IGWA moves this Court for an Order excluding certain portions of the prefiled lay testimony submitted by Coalition as delineated in the attached Table based upon the grounds (a) that said testimony was not properly disclosed in violation of the applicable scheduling orders; and/or (b) that it constitutes expert testimony for which no foundation has been provided and for which the lay witnesses are not qualified to testify; and/or (c) that it constitutes inadmissible hearsay.

ARGUMENT IN SUPPORT:

- A. **Certain portions of Coalition's Lay Testimony must be excluded because it was not properly disclosed in conformance with the applicable scheduling orders.**

The Coalition had a duty to comply with the Director's scheduling orders which required, among other things, the disclosure by August 19, 2005, of a summary of the testimony to be given at trial by all lay witnesses and the disclosure by September 26, 2007, of all expert direct testimony and updated expert reports. When it came time for Coalition to prefile its lay testimony, the Coalition included certain testimony which was beyond the scope of the previously disclosed summaries and/or which constitutes expert opinion that was never previously disclosed and for which no reports were ever provided as required by the applicable scheduling orders. Those portions of the lay testimony submitted by Coalition which is objectionable on this basis are identified in the Attached Table.

The deadlines and disclosures required by the scheduling orders in this case were designed to promote candor and fairness in the pre-trial discovery process, similar to the purposes underlying Idaho Rule of Civil Procedure 26. See *Radmer v. Ford Motor Co.*, 120 Idaho 86, 89, 813 P.2d 897, 900 (1991). "Typically, failure to meet the requirements of Rule 26 results in exclusion of the proffered evidence." *Id.* "Moreover, while trial courts are given broad discretion in ruling on pretrial discovery matters, reversible error has been found in allowing testimony where Rule 26 has not been complied with." *Id.*; see also *Clark*, 137 Idaho at 159, 45 P.3d at 815 (finding reversible error in district court's admittance of evidence despite Rule 26 violation for failing to supplement expert disclosure).

Because the lay testimony exceeds the scope of that previously disclosed (as identified in the attached Table) it was not properly disclosed in conformance with the applicable scheduling

orders. We respectfully request that an Order be entered excluding said testimony from the trial of this matter.

B. Certain portions of Coalition's Lay Testimony must be excluded because it constitutes expert opinion and the lay witnesses are not qualified to provide such testimony.

Certain portions of the lay testimony submitted by Coalition constitutes expert testimony, as identified in the Table attached hereto. Idaho Rules of Evidence 702 and 703 provide some guidance in this matter.¹ These rules provide as follows:

I.R.E. 702. Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of opinion or otherwise.

I.R.E. 703. Basis of opinion testimony by experts.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial impact.

In applying the foregoing rules, the Idaho Supreme Court has held that to give expert opinion testimony, a witness must first be qualified as an expert. *State v. Hopkins*, 113 Idaho 679, 747 P.2d 88 (1987). The foundation for establishing a witness' qualifications as an expert must be offered before his testimony may be received in evidence. *State v. Johnson*, 119 Idaho 852, 810

¹ Although the Hearing Officer is not bound by the Idaho Rules of Evidence (*see* IDAPA 37.01.01.600), the Rules of Procedure of the Idaho Department of Water Resources provide sufficient discretion to the Hearing Officer as the gate keeper of all evidence to apply the Idaho Rules of Evidence as deemed necessary and appropriate. The Hearing Officer generally applied the Idaho Rules of Evidence throughout the recent Thousand Springs trial/hearing. Based upon that precedent, the Idaho Rules of Evidence should likewise be applied in this case.

P.2d 1138 (1991). Under I.R.E. 702, there must be some demonstration that the witness has acquired, through some type of training, education or experience, the necessary expertise and knowledge to render the proffered expert opinion. *State v. Konechny*, 134 Idaho 410, 3 P.3d 535 (Idaho Ct. App. 2000).

As mentioned above, before any witness can provide expert testimony, the witness and the witness' opinion must be fully disclosed in conformance with any applicable scheduling orders. That did not occur in this case. Additionally, foundation must be laid establishing the witness' qualifications as an expert. Also, the methodology upon which the witness basis her testimony must be shown to possess indicia of reliability. Lastly, any expert opinion which is speculative, conclusory or unsubstantiated by facts in the record must be excluded.

The Coalition timely filed extensive expert testimony, properly disclosing all of the theories of their disclosed experts. They now purport to use unqualified and incompetent lay witnesses to testify on many of the same issues based quite obviously on hearsay and discussions with their expert witnesses. The lay testimony submitted by Coalition which is objectionable for these reasons is identified on the attached Table. Because that testimony is improperly proffered expert testimony, it is respectfully requested that an Order be entered excluding said testimony from the hearing in this matter.

C. Certain portions of Coalition's Lay Testimony must be excluded because it constitutes inadmissible hearsay.

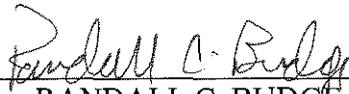
As identified within the attached Table, certain portions of the lay testimony submitted by Coalition constitutes inadmissible hearsay thus, such testimony must be excluded. It is respectfully requested that an Order be entered excluding said testimony from the hearing in this matter.

CONCLUSION

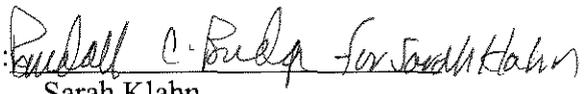
For the foregoing reasons, it is requested that an Order be entered excluding all testimony identified within the attached Table. In so requesting, IGWA does not concede that all or any of the other testimony submitted by Coalition is admissible. Rather, IGWA merely reserves the right to objection to all or any of the other testimony at a later time.

Respectfully submitted this 11th day of January, 2008.

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Attorneys for IGWA

WHITE & JANKOWSKI

By: 
Sarah Klahn
Attorney for City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2008, I served a true and correct copy of the foregoing document by delivering it to the following individuals by the method indicated below, addressed as stated.

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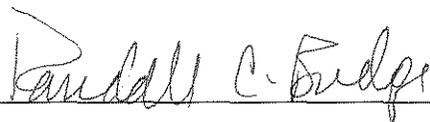


TABLE OF INADMISSIBLE TESTIMONY

Witness:	Testimony	Cite(s)	Basis of Objection
GREG GARATEA Feedlot operator/Rancher – TFCC	Reduction of water deliveries has caused a reduction in the total pounds of beef he can produce and less forage on marginal ground resulting in a \$58,930.00 loss.	3:20-25 and 4:1-17	Expert testimony; no foundation; incompetent; conclusory
	Standardized the year to year weight of his herd and with that, calculated a loss of \$42,521.73	4:18-25 and 5:1-8	Expert testimony; no foundation; incompetent; conclusory
	Testimony that he has to depend on rain to provide additional water to the pasture due to the reduced water supplies.	5:9-16	Expert testimony; no foundation; incompetent; conclusory
	Loses \$30,000 for every season he is unable to divert his full share.	6:13-16	Expert testimony; no foundation; incompetent; conclusory
RANDY BINGHAM BID Manager	Testimony regarding Burley Irrigation District's costs to construct Minidoka, American Falls and Palisades Reservoirs.	6:14-7:17	Irrelevant; no foundation.
	Testimony regarding the relationship between spring flows, reach gains, and snowmelt in the filling of reservoirs and the effect of ground water pumping on reach gains.	12:22-13:18	Expert testimony; legal conclusion; no foundation.
	Testimony regarding the effects of water supply as it relates to costs, yields, cropping patterns, etc.	14:12-23	No foundation; hearsay; conclusory; nature of testimony not disclosed.
	Testimony regarding character of Burley Irrigation District members.	16:11-14	Irrelevant
	IDWR's administration of water rights is causing an unreliable water supply and forced farmers to alter cropping patterns.	18: 1-5	Expert testimony; no foundation; incompetent; hearsay.
	Testimony that 1995 was a year of significant and unusual precipitation.	20:13-14	Expert testimony; no foundation; conclusory.
BILLY RAY THOMPSON MID Manager	Minidoka Irrigation District seems to lose its natural flow earlier and go on storage sooner and don't seem to get as much natural flow in the fall as it once did.	12:21-13:2	Expert opinion; incompetent; no foundation; conclusory
	Spring flows to American Falls Reservoir and reach gains below the reservoir have declined.	13:5-11	Expert opinion; incompetent; no foundation; conclusory
	Natural flow declining	13:14	Expert opinion; incompetent; no foundation; conclusory
	Ground water pumping is depleting surface water flows.	17:5-6	Expert opinion; incompetent; no foundation; conclusory; hearsay

	Minidoka Irrigation District should be permitted unlimited carryover storage under Idaho law.	20:1-5	Legal conclusion; incompetent; no foundation
	Testimony regarding various effects of the minimum full supply established by the Director.	21:4-11	Legal conclusion; incompetent; no foundation
	All water rights should be administered based solely on priority.	21:15-20	Legal conclusion; incompetent
KEN KOSTKA Farmer - MID and A&B	Weather can only be adverse factor on crop decisions.	4:18-21	Expert testimony; no foundation; incompetent; conclusory
	Testimony that he had to change his history cropping rotations due to the lack of storage volumes and in 2004 had to purchase water costing \$18,604.00	5:8-14	Expert testimony; no foundation; incompetent; conclusory
SCOTT BREEDING Farmer from Milner and NSCC	Testimony describing the water right on the Milner Project farms as "old" and "new" with the "old" lands irrigated by natural flow rights and the "new" lands irrigated with Palisades storage water rights.	3:13-25 and 4:1-3	Hearsay; expert testimony; no foundation incompetent
	Testimony that they do not reuse any return flows or tail-water because there is very little runoff from the fields due to sprinkler use.	4:20-23	Expert testimony; no foundation; incompetent
	Testimony that his full supply on the NSCC project is 5/8" per acre.	6:15-21	Hearsay; expert testimony; no foundation; incompetent
	Testimony that the natural flow supply is dwindling and that they do not have rights like they used to, making them use more of their own storage.	8:14-20	Expert testimony; no foundation; incompetent
	Testimony that other farmers in his district have taken out gravity irrigation to install expensive gated pipe and that most of the farms in his precinct are irrigated by sprinkler.	9:3-7	Hearsay; expert testimony; no foundation; incompetent
	Testimony that other landowners have moved crops out of the district due to water concerns.	9:8-14	Hearsay; expert testimony; no foundation; incompetent
	Testimony regarding measures farmers have taken in the district due to the reduced water supply.	9:15-19	Hearsay; expert testimony; no foundation; incompetent
	Testimony that the use of storage water for mitigation places stress on the reservoir system and due to the senior status of those storage rights, they should be filled for future irrigation use.	10:14-23	Expert testimony; no foundation; incompetent
TED DIEHL NSCC Manager	North Side Canal Company "seems to run out of natural flow sooner than [it] has historically."	11:12-16	Expert opinion; no foundation; incompetent
	North Side Canal Company's efforts to ration water during shortage reduces crop yields.	12:5-7	Expert opinion; no foundation; incompetent.

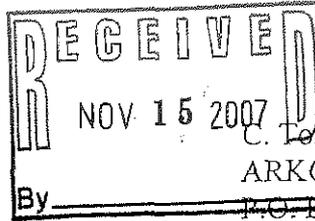
	Testimony regarding effect of reduced water supply as it relates to costs, yields, cropping patterns, etc.	13:11-19	No foundation; conclusory; nature of testimony not disclosed.
	Water supplies have forced farmers to grow less profitable crops than they would have with a full water supply	13:16-19	No foundation; nature of testimony not disclosed; hearsay
LARRY PENNINGTON NSCC	Testimony that renter experienced reduced yields on his corn in 2004.	4:7-10	Hearsay; no foundation.
	Testimony that renter left farm fallow in 2005 due to water shortage.	4:13-15	Hearsay; no foundation.
DAN TEMPLE A&B Manager	A&B Irrigation District landowners have suffered reduced crop yields and monetary losses due to involuntary changes in cropping patterns.	11:10-18	No foundation; conclusory; nature of testimony not disclosed; hearsay
	Testimony regarding construction of Jackson Lake Dam, American Falls Dam, and Palisades Dam	9:6-11	Irrelevant; nature of testimony not disclosed; foundation; incompetent
	Testimony regarding character of A&B Irrigation District members.	12:1-10	Irrelevant; no foundation; nature of testimony not disclosed.
	IDWR's Conjunctive Management of surface and ground water rights has reduced A&B Irrigation District's storage in American Falls and Palisades Reservoirs.	14:4-7	Expert testimony; no foundation; legal conclusion
	The "minimum full supply" renders A&B Irrigation District's water right worthless.	15:23-25	Expert opinion; no foundation; conclusory.
BOB ESTERBROOK A&B Manager	Reach gains in the Snake River and spring flows are declining.	3:1-3	Hearsay; expert opinion; no foundation; incompetent hearsay
	Water supplies have made banking industry very cautious, dried up capital, prevented farming operations from growing, reduced yields, and reduced profits to the point of loss.	4:3-7	Witness incompetent; conclusory; no foundation; nature of testimony not disclosed
	Testimony of various concerns of AFRD#2 shareholders	5:21-6:4	Hearsay
LYNN HARMON General Manager for AFRD #2	Testimony of the physical facilities of AFRD #2.	2:14-18	Hearsay.
	Testimony regarding AFRD #2 patrons private use of water independent of AFRD #2.	3:15-18	Hearsay; expert opinion; no foundation; incompetent
	Testimony that AFRD #2 has been forced to cut back delivery of irrigation water from 5/8" to 1/2" per acre.	4:3-7	Hearsay; expert testimony; no foundation; incompetent; conclusory
	Testimony regarding the cause of the 2005 AFRD #2 delivery call.	4:8-11	Expert testimony; no foundation; incompetent; conclusory
	Testimony that the State administration has left AFRD #2 short of their normal water supply.	4:16-18	Expert testimony; no foundation; incompetent; conclusory
	Testimony that carryover storage is	4:19-21	Expert testimony; no

	water left to help supply water for the coming year in case of a water shortage.		foundation; incompetent; conclusory; legal conclusion
	Testimony that IDWR's current administration utilizing the Conjunctive Management Rules leaves them short of water.	5:9-11	Expert testimony; no foundation; incompetent; conclusory
	Testimony that the shortage of water affects the types of crops that are grown and creates a loss of income.	5:12-16	Expert testimony; no foundation; incompetent; conclusory; hearsay
	Utilizing a "minimum full supply" would not help because it is after the fact and doesn't help at the time of the actual shortage.	5:17-25	Expert testimony; no foundation; incompetent; conclusory
	Testimony that water should be administered in a manner to timely fill senior rights.	6:1-3	Expert testimony; no foundation; incompetent; conclusory
	Testimony that the water outlook for 2008 would be short to deliver water at 5/8" per acre.	6:4-8	Hearsay; expert testimony; no foundation; incompetent; conclusory
	Too early to establish whether the 2008 water supply for AFRD #2 is static or changing.	6:9-11	Hearsay; expert testimony; no foundation; incompetent; conclusory
PHIL BLICK Farmer and member and board member of TFCC and NSCC	Experienced reduced water supplies on occasion prior to 2000 but more often recently.	7: 7-9	Expert testimony; no foundation; incompetent
	Testimony of decreased crop yields due to reduced water supplies.	7: 12-20 8: 1-5	Expert testimony; no foundation; speculative
	Hot weather and wind stresses crops, but reduced water supply is the primary factor causing reduced yields.	8: 8-12	Expert testimony; no foundation; speculative
	Water supplies have decreased in general over the last 5 years, particularly natural flow supplies.	12: 3-4	Expert testimony; no foundation; incompetent
	Spring flows have dropped dramatically.	12: 12	Expert testimony; no foundation; incompetent
	Testimony regarding problems allegedly experienced by shareholders and changes in cropping patterns.	12: 19- 13: 14	Hearsay; no foundation
	Testimony as to how the state should administer water.	13: 22- 14: 3	Legal conclusion; witness incompetent
CHARLES COINER TFCC Board Member and Farmer	Testimony that net revenue is decreased by cropping pattern changes that would otherwise not occur with full water supplies.	5: 11-21	Expert testimony; no foundation; speculative
	Testimony that less water consumptive crops are less profitable and that reduced water supplies have decreased hay production.	6: 3-14	Expert opinion; no foundation; speculative
	Testimony that junior priority storage rights have not filled in recent years due to increased pressure on the storage	9: 5-8	Expert testimony; no foundation; incompetent

	system which has experienced greater demand in recent years.		
JOHN O'CONNOR TFCC Farmer	Testimony that less water consumptive crops generate less income.	5: 12-20	Expert testimony; no foundation; speculative

SWC

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Twin Falls Canal Company

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DISTRICT, NORTH SIDE CANAL)
COMPANY, AND TWIN FALLS)
CANAL COMPANY)
)
HEARING ON DIRECTOR'S MAY 2,)
2005 AMENDED ORDER)
_____)

**SURFACE WATER COALITION'S
DISCLOSURE OF LAY WITNESSES
AND EXHIBITS**

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 Company (collectively hereafter referred to as the "Surface Water Coalition" or "Coalition"), by and through counsel of record, and pursuant to the *Order Approving Stipulation and Joint Motion for Rescheduled Hearing*, hereby disclose the following lay witnesses and exhibits that may be used at the hearing (as identified at the October 1, 2007 Status Conference, pre-filed written direct testimony may be submitted by January 4, 2008):

WITNESSES:

A&B:

- 1) Dan Temple, Manager
- 2) Ken Koska, Landowner

AFRD#2:

- 1) Lynn Harmon, Manager
- 2) Bob Esterbrook, Landowner
- 3) John Arkoosh, Landowner
- 4) Gooch Brauburger, Landowner
- 5) Jim Ritchie, Landowner

BID:

- 1) Randy Bingham, Manager

Milner:

- 1) Walt Mullins, Manager
- 2) Scott Breeding, Landowner
- 3) Rodney George, Landowner

MID:

- 1) Billy Thompson, Manager
- 2) Frank Hunt, Landowner

NSCC:

- 1) Ted Diehl, Manager
- 2) Larry Pennington, Asst. Manager / Shareholder
- 3) Albert Lockwood, Shareholder
- 4) Mike Larsen, Shareholder
- 5) Jack Hirai, Shareholder

TFCC:

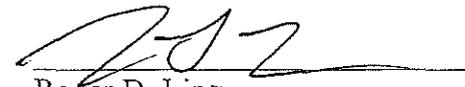
- 1) Vince Alberdi, Manager
- 2) Jay Barlogi, East-End Watermaster
- 3) Dan Shewmaker, Shareholder
- 4) Chuck Coiner, Shareholder
- 5) Phil Blick, Shareholder
- 6) John O'Connor, Shareholder
- 7) Greg Garatea, Shareholder

EXHIBITS:

- 1) Any records or documents identified in the Department's Partial Agency Record relied upon by the Director for the May 2, 2005 Order.
- 2) Documents submitted in Responses to Director's Information Request dated March 15, 2005 and April 15, 2005
- 3) Documents and affidavits submitted for Purposes of 2007 Water Supply Assessment and June 22, 2007 Hearing
- 4) Any exhibits identified in Surface Water Coalition Expert Witnesses Exhibit List

DATED this 14th day of November, 2007.

ARKOOSH LAW OFFICES CHTD.

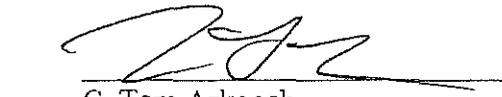

Roger D. Ling

Attorneys for A & B Irrigation District
and Burley Irrigation District

FLETCHER LAW OFFICES


W. Kent Fletcher

Attorneys for Minidoka Irrigation District


C. Tom Arkoosh

Attorneys for American Falls
Reservoir District #2

BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

Attorneys for Milner Irrigation District,
North Side Canal Company, and Twin

Falls Canal Company
CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2007, I served a true and correct copy of the foregoing *Surface Water Coalition's Disclosure of Lay Witnesses and Exhibits* on the following by the method indicated:

Via Email and U.S. Mail

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c/o Victoria Wigle
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James S. Lochhead
Adam T. DeVoe
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Matt Howard
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IDWR – Eastern Region
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Idaho Falls, Idaho 83402-1718

IDWR – Southern Region
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380

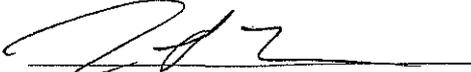
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Facsimile: (208) 934-8873

Attorney for American Falls Reservoir District #2

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

COMES now, American Falls Reservoir District #2, by and through their attorney of record, C. Tom Arkoosh of Arkoosh Law Offices, Chtd. and hereby submits its *Report on Expected Lay Witnesses*:

1. Lynn Harmon, Manager
American Falls Reservoir District #2
112 South Apple
Shoshone, ID 83352

The manager will testify to the operation of the system, including but not limited to amounts of water delivered from storage and natural flow; transmission; distribution; effects of shortages on planning and delivery; user responses and concerns; amount of water necessary and useful; and, cumulative effects of delpetions. Further, the manager will testify regarding the information supplied in the January 14, 2005 call, and the *Petitioners Joint Response to Directors February 14, 2005, Request for Information.*

2. Board Members of American Falls Reservoir District #2
112 South Apple
Shoshone, ID 83352

Board members (it is not anticipated all Board members will testify) will testify regarding the difficulties of operating a system without

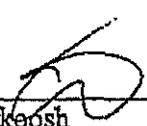
enforcement of the priority doctrine. They will further testify regarding the importance of the District's storage right as a property right in use, planning, and application of water owned by the District.

3. Howard Morris
1101 East 2900 South
Hagerman, ID 83332
4. Bill Arkoosh
2005 US Hwy 26
Gooding, ID 83330
5. James Ritchie
1749 East 400 South
Jerome, ID 83338

Witnesses #3, 4 and 5 will testify they use their water right when it is delivered to them. They will further testify regarding the costs, losses, and hardships occasioned when their water right is not delivered, including, but not limited to, the changes in rotation and cropping patters; transmission and distribution difficulties, accommodations, and costs; planning impediments; and the costs imposed upon them from the inability to rely upon effective administration of their water rights.

DATED this 18 day of August, 2005.

ARKOOSH LAW OFFICES, CHTD.



C. Tom Arkoosh

CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of August, 2005, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

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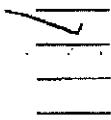
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C. Tom Arkobsh

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Attorneys for Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company

**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)
HEARING ON DIRECTOR'S MAY 2, 2005)
AMENDED ORDER)

**REPORT OF GENERAL BASIS
OF WITNESS TESTIMONY FOR
MILNER IRRIGATION
DISTRICT, NORTH SIDE
CANAL COMPANY, AND TWIN
FALLS CANAL COMPANY**

Milner Irrigation District ("Milner"), North Side Canal Company ("NSCC"), and Twin Falls Canal Company ("TFCC") hereby submit the following *Report of General Basis of Witness Testimony* pursuant to paragraph three of the Director's July 22, 2005 *Scheduling Order* in the above-entitled matter. Given the contested case is in the initial stages, the witness lists, including the general basis of the identified testimony, may be revised or supplemented as necessary during the course of this proceeding.

Milner Irrigation District

Walt Mullins, Manager

Mr. Mullins will provide testimony on Milner's water delivery operations, including a general overview of the project and the water distribution system. Mr. Mullins will also provide testimony on Milner's water supply, water rights, water diversion records, and water use on the

project. Mr. Mullins will also provide any necessary testimony regarding information that was submitted to the Director on March 15th and April 15th in response to the Director's February 14, 2005 Information Request.

Julie Conrad, Secretary

Ms. Conrad will provide testimony on Milner's water delivery and water use records. Ms. Conrad will also provide any necessary testimony regarding information that was submitted to the Director on March 15th and April 15th in response to the Director's February 14, 2005 Information Request.

Scott Breeding, Director

Mr. Breeding will provide testimony on Milner's water supply, water rights, Board decisions with respect to water supply, water distribution facilities, and water use on the project.

Craig Larson, Landowner

Mr. Larson will provide testimony on water supply and impacts on farming practices, including cropping pattern decisions and fallowing of ground in response to reduced water supplies on the Milner project.

Rodney George, Landowner

Mr. George will provide testimony on water supply and impacts on farming practices, including cropping pattern decisions, increased number of irrigation sets, and system modifications in response to reduced water supplies on the Milner project.

Darrell Funk, Landowner

Mr. Funk will provide testimony on water supply and impacts on farming practices, including cropping pattern decisions in response to reduced water supplies on the Milner project.

North Side Canal Company

Ted Diehl, Manager

Mr. Diehl will provide testimony on NSCC's water delivery operations, including a general overview of the project and the water distribution system. Mr. Diehl will also provide testimony on NSCC's water supply, water rights, water diversion records, and water use on the project. Mr. Diehl will also provide any necessary testimony regarding information that was submitted to the Director on March 15th and April 15th in response to the Director's February 14, 2005 Information Request.

Larry Pennington, Water Quality Specialist

Mr. Pennington will provide testimony on NSCC's water delivery operations, including a general overview of the project and the water distribution system. Mr. Pennington will also provide testimony on NSCC's water supply, water rights, water diversion records, water use on the project, and impacts on farming practices. Mr. Pennington will also provide any necessary testimony regarding information that was submitted to the Director on March 15th and April 15th in response to the Director's February 14, 2005 Information Request.

Stephanie Olmstead, Lab Technician

Ms. Olmstead will provide any necessary testimony regarding information that was submitted to the Director on March 15th and April 15th in response to the Director's February 14, 2005 Information Request.

Greg Ledbetter, Director / Shareholder

Mr. Ledbetter will provide testimony on NSCC's water supply, water rights, Board decisions with respect to water supply, water distribution facilities, and water use on the project. Mr. Ledbetter will also provide testimony on water supply and impacts on farming practices, including cropping pattern decisions and system modifications in response to reduced water supplies on the NSCC project.

Jack Hirai, Director / Shareholder

Mr. Hirai will provide testimony on NSCC's water supply, water rights, Board decisions with respect to water supply, water distribution facilities, and water use on the project. Mr. Hirai will also provide testimony on water supply and impacts on farming practices, including cropping pattern decisions, rental of additional water, and fallowing of ground in response to reduced water supplies on the NSCC project.

Albert Lockwood, Director / Shareholder

Mr. Lockwood will provide testimony on NSCC's water supply, water rights, Board decisions with respect to water supply, water distribution facilities, and water use on the project. Mr. Lockwood will also provide testimony on water supply and impacts on farming practices, including cropping pattern decisions, rental of additional water, and system modifications in response to reduced water supplies on the NSCC project and other leased lands.

Tom Davis, Shareholder

Mr. Davis will provide testimony on water supply and impacts on farming practices, including cropping pattern decisions, reductions in the number of cattle on pastures, and system modifications in response to reduced water supplies on the NSCC project.

Bob Shillington, Shareholder

Mr. Shillington will provide testimony on water supply and impacts on farming practices, including cropping pattern decisions and system modifications in response to reduced water supplies on the NSCC project.

Mike Larsen, Shareholder

Mr. Larsen will provide testimony on water supply and impacts on farming practices in response to reduced water supplies on the NSCC project.

Wayne Chandler, Shareholder

Mr. Chandler will provide testimony on water supply and impacts on farming practices in response to reduced water supplies on the NSCC project.

Jay Little, Shareholder

Mr. Little will provide testimony on water supply and impacts on farming practices in response to reduced water supplies on the NSCC project.

Twin Falls Canal Company

Vince Alberdi, Manager

Mr. Alberdi will provide testimony on TFCC's water delivery operations, including a general overview of the project and the water distribution system. Mr. Alberdi will also provide testimony on TFCC's water supply, water rights, water diversion records, and water use on the project. Mr. Alberdi will also provide any necessary testimony regarding information that was submitted to the Director on March 15th and April 15th in response to the Director's February 14, 2005 Information Request.

Brian Olmstead, Field Supervisor

Mr. Olmstead will provide testimony on TFCC's water delivery operations, including a general overview of the project and the water distribution system. Mr. Olmstead will also provide testimony on TFCC's water supply, water rights, water diversion records, and water use on the project. Mr. Olmstead will also provide any necessary testimony regarding information

that was submitted to the Director on March 15th and April 15th in response to the Director's February 14, 2005 Information Request.

Doug Howard, Castleford West Division Watermaster

Mr. Howard will provide testimony on TFCC's water delivery operations and the water distribution system.

Henry Patton, Buhl / Low-Line West Division Watermaster

Mr. Patton will provide testimony on TFCC's water delivery operations and the water distribution system.

Jay Barlogi, East Division Watermaster

Mr. Barlogi will provide testimony on TFCC's water delivery operations and the water distribution system.

Chuck Coiner, Director / Shareholder

Mr. Coiner will provide testimony on TFCC's water supply, water rights, Board decisions with respect to water supply, water distribution facilities, and water use on the project. Mr. Coiner will provide testimony on water supply and impacts on farming practices, including cropping pattern decisions and the rental of additional water in response to reduced water supplies on the TFCC project.

Dan Shewmaker, Director / Shareholder

Mr. Shewmaker will provide testimony on TFCC's water supply, water rights, Board decisions with respect to water supply, water distribution facilities, and water use on the project. Mr. Shewmaker will provide testimony on water supply and impacts on farming practices, including cropping pattern decisions and the rental of additional water in response to reduced water supplies.

Phil Blick, Director / Shareholder

Mr. Blick will provide testimony on TFCC's water supply, water rights, Board decisions with respect to water supply, water distribution facilities, and water use on the project. Mr. Blick will provide testimony on water supply and impacts on farming practices, including cropping pattern decisions, the rental of additional water, and system modifications in response to reduced water supplies.

Gerald Tews, Director / Shareholder

Mr. Tews will provide testimony on TFCC's water supply, water rights, Board decisions with respect to water supply, water distribution facilities, and water use on the project. Mr. Tews

will provide testimony on water supply and impacts on farming practices, including cropping patterns in response to reduced water supplies on the TFCC project.

John O'Connor, Shareholder

Mr. O'Connor will provide testimony on water supply and impacts on farming practices, including cropping patterns, increased number of irrigation sets, and the rental of additional water in response to reduced water supplies on the TFCC project.

Terry Kramer, Shareholder

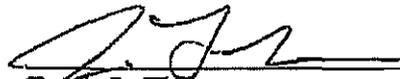
Mr. Kramer will provide testimony on water supply and impacts on farming practices, including cropping patterns in response to reduced water supplies on the TFCC project.

Greg Garatea, Shareholder

Mr. Garatea will provide testimony on water supply and impacts on farming practices, including the increased number of irrigation sets and reductions in the number of cattle on pastures in response to reduced water supplies on the TFCC project.

DATED this 19th day of August 2005

BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

Attorneys for Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August 2005, I served a true and correct copy of the foregoing *Report of General Basis of Witness Testimony for Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company* on the following by the method indicated:

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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 HEARING ON)
DIRECTOR'S MAY 2, 2005 AMENDED ORDER)
_____)

SECOND DISCLOSURE
AND ISSUES OF LAW
AND FACT SUBMITTED
BY MINIDOKA IRRIGATION
DISTRICT

Minidoka Irrigation District ("MID") submits the following pursuant to paragraph three of the Director's July 22, 2005 *Scheduling Order* in the above-entitled matter.

BASIS OF TESTIMONY

Bill Thompson, Manager

Minidoka Irrigation District
98 West 50 South
Rupert, Idaho 83350
(208) 436-3188

Bill Thompson will testify about the general operations and management of the Minidoka Irrigation District, based upon his years of employment by and management of the District. He will also testify about the District's historical and current water delivery, and the diversion, delivery and use of water on the District.

Ruth Bailes, Secretary/Treasurer

Minidoka Irrigation District
98 West 50 South
Rupert, Idaho 83350
(208) 436-3188

Ruth Bailes will primarily be called as the custodian of the District's records, as necessary to offer records into evidence.

In the initial disclosure of the District, Directors were listed, but it is not anticipated that the Directors will be called as witnesses at this time.

In addition, employees, who have not yet been specifically determined, of the Bureau of Reclamation, Idaho Department of Water Resources and Water District No. 1 have information regarding MID's water rights, diversion of water, allocation between storage and natural flow and other information pertaining to MID's water rights, and will be called to testify concerning those matters.

The District reserves the right to supplement the list of witnesses based upon on going discovery in this matter.

ISSUES OF LAW AND FACT

The issues of law and fact for the hearing are set out in the Surface Water Coalition's Petition Requesting Hearing dated May 17, 2005, which is incorporated into this disclosure as though fully set forth. Without limiting those issues of law and fact, the issues will include, but not be limited to:

1. Are the conjunctive management rules constitutional as written?
2. Are the conjunctive management rules constitutional as administered by IDWR?
3. If the conjunctive management rules are constitutional, are they properly administered by IDWR?
4. Is there any basis in law or rule for the "replacement water plan" concept created by the Director?
5. What is the relationship between natural flow rights and storage rights held by the District as applied to a call against junior ground water rights?
6. Does the Director or IDWR have the right to effectively authorize the taking of senior natural flow rights and storage water rights by junior ground water right holders?
7. What is injury?
8. Once water is stored, what are the rights of use of the storage right holder, and how are those uses to be considered in the context of a water call?
9. How does a senior surface water holder obtain curtailment in a meaningful fashion in the year in which injury is occurring of junior ground water users who are injuring senior water rights?
10. Does IDWR's administration of water rights meaningfully address the long term impact of ground water depletions on senior surface water right holders?

11. Does the City of Pocatello have standing in this action in light of the terms of its contract with the Bureau of Reclamation?

The District reserves the right to supplement this list based upon the discovery taking place in this action.

DATED this 19 day of August, 2005.


W. Kent Fletcher

CERTIFICATE OF SERVICE

I hereby certify that on this 19 day of August 2005, I served a true and correct copy of the foregoing *SECOND DISCLOSURE AND ISSUES OF LAW OF FACT SUBMITTED BY MINIDOKA IRRIGATION DISTRICT* on the following by email and U.S. Mail:

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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.)

REPORT ON THE
GENERAL BASIS OF
WITNESSES' TESTIMONY

COME NOW A & B Irrigation District and Burley Irrigation District, by and through their attorney of record, Roger D. Ling of the firm Ling, Robinson & Walker, and in response to paragraph 3 of the Director's Scheduling Order of July 22, 2005, hereby submit the general basis of each witnesses' testimony, other than expert witnesses, expected to be called by A & B Irrigation District and Burley Irrigation District:

A & B Irrigation District

1. Dan Temple, Manager, A & B Irrigation District.

Mr. Temple, having worked for A & B Irrigation District since March 22, 1976, and having held the position as Manager since 1997, has extensive experience in water delivery,

LING, ROBINSON & WALKER
ATTORNEYS AT LAW
RUPERT, IDAHO 83350-0396

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3 irrigation requirements, water supplies, and crops grown on Unit A of A & B Irrigation District.
4 Mr. Temple will testify as to these matters of which he has substantial experience and knowledge,
5 including records of the irrigation district that are maintained in regard to these matters, and how
6 data is gathered for such records. Mr. Temple will also testify as to the effects of water shortages
7 for landowners of A & B Irrigation District and the methods and costs incurred in obtaining
8 additional water supplies as the result of such shortages.

9 2. Ken Kostka, member of the Board of Directors of A & B Irrigation District
10 and landowner and operator within Unit A of A & B Irrigation District.

11 Mr. Kostka will testify as to his extensive knowledge in the irrigation of crops
12 under private wells and Unit A of A & B Irrigation District, decisions required to be made by the
13 Board of Directors as the result of a lack of water for deliveries to landowners because of water
14 shortages and efforts by the irrigation district and as an individual landowner to obtain additional
15 water supplies for lands served with surface water within Unit A of A & B Irrigation District.
16 Mr. Kostka will also testify as to significant and substantial changes in farming operations as the
17 result of water shortages and anticipated shortages, and the injury caused to crops as the result of
18 water shortages and injury as a result of additional costs incurred in mitigating damages caused by
19 water shortages in Unit A of A & B Irrigation District.

20 3. Harold Mohlman, President, Board of Directors of A & B Irrigation District
21 and farmer.

22 Mr. Mohlman has extensive experience in farming within A & B Irrigation District,
23 has served on the Board of Directors of the irrigation district since 1987 and as President of the
24 Board since January, 1997. Mr. Mohlman will testify as to the efforts taken by A & B Irrigation
25 District to obtain an adequate water supply as the result of shortages in water storage and carry
26 over for lands within A & B Irrigation District. He will also testify as to the nature of crops

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3 grown within A & B Irrigation District, the water needs of such crops throughout the irrigation
4 season, and the effects of water shortages on crops and crop rotation.

5 4. Dan Schaeffer, member of the Board of Directors of A & B Irrigation
6 District and farmer.

7 Mr. Schaeffer will testify as to the crops grown within A & B Irrigation District
8 and crops grown under private wells in the Eastern Snake Plain Aquifer, his knowledge of
9 farming activities, irrigation needs of crops, and methods of irrigation used by farmers within
10 A & B Irrigation District and outside of the irrigation district, the effect of water shortages on
11 crops being grown or on crop rotation as the result of anticipated shortages, and the injury that
12 can be sustained as the result of limitation on crops grown when water shortages exist or are
13 anticipated.

14 5. Diana Warburton, Secretary-Treasurer for A & B Irrigation District.

15 Mrs. Warburton has been employed by A & B Irrigation District since 1980, and
16 has acted as Secretary-Treasurer of the irrigation district since 1997. She has substantial
17 knowledge as to the books and records of A & B Irrigation District maintained in the offices of
18 A & B Irrigation District in Rupert, Idaho, and knowledge as to how data is obtained and
19 recorded in the irrigation district's books and records.

20 The Manager and Secretary may also be called upon to testify in regard to the
21 information supplied in the January 14, 2005 letter request for water deliveries and the response to
22 the Director's Request for Information dated February 14, 2005 and documents provided pursuant
23 to discovery requests.

24 **Burley Irrigation District**

25 1. Randy Bingham, Manager, Burley Irrigation District.

26 Mr. Bingham has been employed as Manager of Burley Irrigation District since
27 1990. Mr. Bingham will testify as to water delivery, irrigation requirements, water supplies and

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3 crops grown within Burley Irrigation District. He will testify as to conservation measures adopted
4 by Burley Irrigation District and the significance to Burley Irrigation District of having an
5 adequate supply of natural flow and stored water for needs of Burley Irrigation District
6 landowners and other uses of stored water. He has complete knowledge of records maintained by
7 Burley Irrigation District in regard to water supplies, water delivery, and water use within Burley
8 Irrigation District, and the activities of Burley Irrigation District and the water supply bank of the
9 Committee of Nine of Water District 01.

10 2. Reid Beck, Watermaster, Burley Irrigation District.

11 Mr. Beck has been employed by Burley Irrigation District since 1977 and has been
12 a Watermaster of Burley Irrigation District since 1992. Mr. Beck has extensive knowledge in
13 water demands of the landowners within Burley Irrigation District and the delivery system used to
14 provide water to landowners of the irrigation district. He will testify as to his knowledge on these
15 matters and how the delivery system of Burley Irrigation Districts operates to insure the delivery
16 of an adequate water supply to its landowners and conservation measures adopted by Burley
17 Irrigation District to conserve available water supplies.

18 3. Brent Bowen, member of the Board of Directors of Burley Irrigation District
19 and farmer.

20 Mr. Bowen will testify as to the activities of the Board of Directors in regard to
21 water conservation, water supplies and the necessity of adequate water supplies for landowners
22 within Burley Irrigation District. Mr. Bowen will also testify as to crops grown within Burley
23 Irrigation District and the affects of water shortages on crops and landowners within Burley
24 Irrigation District. He will also testify as to the need for an adequate supply of storage water each
25 year, including carry over, to insure an adequate water supply when its natural flow rights do not
26 provide sufficient water as the result of drought and other natural conditions that cannot be
27 controlled by Burley Irrigation District and other water managers.

28 REPORT ON THE GENERAL BASIS OF WITNESSES' TESTIMONY - 4

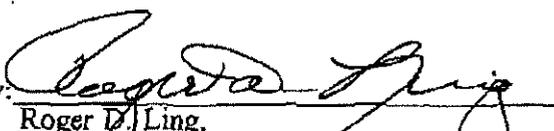
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4. Leonard Beck, member of the Board of Directors of Burley Irrigation District, farmer of lands within Burley Irrigation District, member or alternative member of the Committee of Nine, member of Water Rental Pool Committee of Committee of Nine, and member of the Idaho Water Resources Board.

Mr. Beck will testify as to his experience and knowledge in regard to crops grown within Burley Irrigation District, water supply of Burley Irrigation District, water delivery by Burley Irrigation District, and the need of an adequate water supply for the landowners within Burley Irrigation District. He will testify as to the efforts of Burley Irrigation District to conserve water, the need for adequate natural flows within the Snake River to provide water to Burley Irrigation District under its natural flow water rights and for storage water in reservoirs within the upper Snake River above Milner Dam.

Respectfully submitted this 19th day of August, 2005.

LING, ROBINSON & WALKER

By: 
Roger D. Ling,
Attorneys for A & B Irrigation District
and Burley Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of August, 2005, served copies of the foregoing *Report of the General Basis of Witnesses' Testimony* upon the following parties by the method indicated below:

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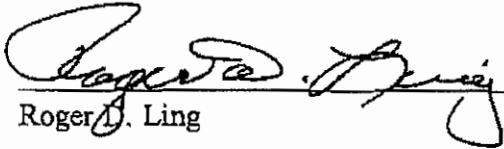
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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

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)
)
)
HEARING ON DIRECTOR'S MAY 2, 2005)
AMENDED ORDER)
_____)

**JOINT SUPPLEMENTAL
DISCLOSURE OF EXPERT
WITNESS**

COMES NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley
Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal

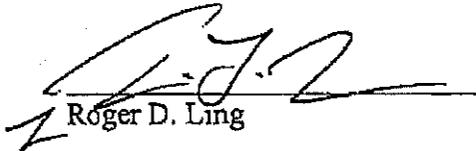
Company, and Twin Falls Canal Company, by and through its counsel of record identified above, pursuant to paragraph four of the Director's July 22, 2005 *Scheduling Order*, and hereby submit the following *Joint Supplemental Disclosure of Expert Witness* in addition to those experts identified in the individual initial disclosures:

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Moscow, Idaho 83843-2334

In addition to the experts already identified, the entities listed above reserve their individual rights to identify additional rebuttal experts if necessary to provide rebuttal opinions and testimony regarding expert opinions that may be offered by other parties during this proceeding.

DATED this 15th day of September 2005.

LING ROBINSON & WALKER



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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September, 2005, I served a true and correct copy of the foregoing *Joint Supplemental Disclosure of Expert Witness* on the following by the method indicated:

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