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Attorneys for A&B Irrigation District

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

| | | |
|---------------------------------------|---|------------------------------|
| IN THE MATTER OF THE PETITION |) | |
| FOR DELIVERY CALL OF A & B |) | DOCKET NO. 37-03-11-1 |
| IRRIGATION DISTRICT FOR THE |) | |
| DELIVERY OF GROUND WATER AND |) | A&B's MOTION FOR |
| FOR THE CREATION OF A GROUND |) | DECLARATORY RULING |
| WATER MANAGEMENT AREA |) | |
| _____ |) | |

COMES NOW, A & B Irrigation District ("A&B" or "District"), by and through counsel of record, and hereby moves the Hearing Officer pursuant to Rules 260 and 565 of the Department's Rules of Procedure (IDAPA 37.01.01 *et seq.*), for an Order, in establishing the law applicable to A&B's Petition for a Delivery Call of ground water pursuant to its ground Water Right No. 36-02080, and the administration of that right, in the hearing before the Hearing Officer on A&B's February 13, 2008 *Petition Requesting Hearing on Director's January 29,*

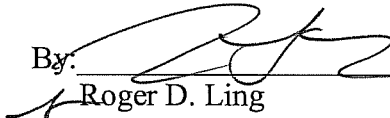
2008 Order, that A&B's said water right and its administration is exempt from the provisions of Idaho's Ground Water Act, I.C. § 42-226, *et seq.*, and amendments thereto, initially adopted in 1951 by the Idaho legislature (1951 Idaho Session Laws, ch. 200), and in particular that provision adopted in 1953 which states: "Prior appropriators of the underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the Director of the Department of Water Resources as herein provided." I. C. § 42-226; Idaho S.L. 1953, ch. 182, § 1; which exemption in § 1 of the Ground Water Act ("GWA") states: "This act shall not affect the rights to the use of ground water in this state acquired before its enactment." (I.C. §§ 42-226 and 42-229); and, for a further Order that in the application of the "Rules for Conjunctive Management of Surface and Ground Water Resources" ("CM Rules") adopted by IDWR on October 7, 1994, IDAPA 37, Title 03, chapter 11, said CM Rules shall be interpreted to include and to be consistent with prior legal precedent established by case law as directed by CM Rule 20.02 which provides: "These rules acknowledge all elements of the prior appropriation doctrine as established by Idaho law." IDAPA 37.03.11.020.02.

Said motion is made on the grounds and for the reasons that Water Right No. 36-02080 relied upon by A&B to obtain delivery of the water to which it is entitled under said decreed water right was acquired on September 9, 1948, prior to the adoption of the Idaho GWA, that the administration of said right is excluded from the provisions of the Idaho GWA, and the CM Rules may be applied in the delivery of water to A&B under said water right only to the extent the CM Rules are consistent with the elements of the prior appropriation doctrine, including the standard that "first in time is first in right" as established by the Constitution, applicable statutes, and case law of Idaho, (IDAPA 37.03.11.010.12 "Definitions" and § .02 of Rule 20, *supra*) and the facts established by certain uncontested findings of fact in the Director's Order of January 29,

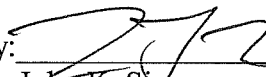
2008, the Affidavit of Dan Temple attached hereto in support of this Motion, and the Memorandum in Support of the Motion submitted herewith setting forth the material facts and controlling law upon which petitioner A&B relies to support this Motion.

ORAL ARGUMENT IS REQUESTED.

DATED this 21st day of March, 2008.

By: 
Roger D. Ling
Attorney at Law

BARKER, ROSHOLT & SIMPSON LLP

By: 
John K. Simpson
Travis L. Thompson
Paul. L. Arrington

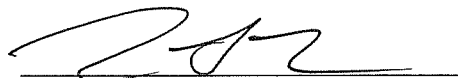
Attorneys for A&B Irrigation District

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of March, 2008, the above and foregoing, was sent to the following by U.S. Mail proper postage prepaid and by email for those with listed email addresses:

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