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ATTORNEYS FOR IDAHO GROUND WATER APPROPRIATORS

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF THE
PETITION FOR DELIVERY CALL
OF A&B IRRIGATION DISTRICT
FOR THE DELIVERY OF GROUND
WATER AND FOR THE CREATION
OF A GROUND WATER
MANAGEMENT AREA

Docket No.: 37-03-11-1

**MOTION FOR PROTECTIVE
ORDER AND NOTICE OF
HEARING**

COME NOW Idaho Ground Water Appropriators, Inc., and its Ground Water District members, for and on behalf of their respective members (collectively "IGWA"), through counsel, and hereby files this Motion for Protective Order under IDAPA 37.01.01.532 in response to A&B Irrigation District's ("A&B") multiple Notices of Deposition *Duces Tecum* served April 1, 2008.

GROUNDS FOR MOTION

The grounds for this motion are as follows:

1. On January 29, 2008, IDWR issued its order in response to A&B's delivery call petition along with the record upon which the order was based. The record consisted of nearly 3,500 pages.

2. On February 26, 2008, there was a hearing on A&B's Motion to Amend Hearing Schedule. IGWA participated in that hearing. A new hearing date of December 3, 2008, was set. At the conclusion of the hearing, it was determined that the parties could work out an agreeable schedule for pre-hearing matters.

3. On March 14, 2008, IDWR filed its *Disclosure of IDWR Employees Who Participated in the Preparation of the January 29, 2008 Order*.

4. On March 20, 2008, A&B, IGWA and the other primary parties to this matter signed a *Stipulation and Joint Motion to Set Pre-Hearing Schedule*. A&B did not mention any desire or intent at that time regarding depositions of IDWR witnesses. It is reasonable to expect that discovery would be conducted in a cooperative and professional manner and would proceed in a similar fashion as in the past two administrative hearings involving many of the same counsel.

5. IGWA timely filed an Answer to A&B's original Delivery Call Petition in 1994 and a Notice of Intent to Remain a Party on November 1, 2007. Further, IGWA has participated in all hearings and on February 11, 2008, filed its Statement in Response to Order of January 29, 2008, reserving its right to participate in the hearing and to respond in any challenges or objections. There is no question that IGWA is a party to the contested case and has a right to

participate in the full and fair discovery of all facts and evidence in this case. See IDAPA 37.01.01.16.

6. On April 1, 2008, A&B sent out eight notices of deposition *duces tecum* scheduling IDWR's witnesses for depositions on various dates spanning a six week period of time, starting on Friday, April 11, 2008, and ending May 14, 2008.

7. Counsel for A&B did not consult with IGWA nor any opposing counsel regarding the deposition dates. Yet, A&B was aware at the time of filing the notices that the first deposition date of April 11, 2008, falls on the response deadline to A&B's Motion for Declaratory Ruling. Ten days notice plus the setting on a deadline in the same case is unreasonable. Further, as A&B's counsel well knows, IGWA's exceptions to the Hearing Officer's orders in the Thousand Springs case are also due this week. Preparing for an unexpected deposition in addition to the other deadlines with less than 10 days notice is unreasonable.

8. On April 2, 2008, IGWA objected to the deposition schedule requesting that a schedule be set that is more accommodating and efficient and provided unavailable dates.

9. On April 3, 2008, other parties objected to the deposition schedule and provided unavailable dates.

10. Counsel for IDWR indicated in an email to counsel that making IDWR's employees available for multiple depositions by the various parties would be "inefficient and taxing" and provided the parties with IDWR's employee's unavailable dates. A review of the unavailable dates shows that it would be possible to group the depositions in a manner that reduces travel time and increases efficiency. Attached hereto as exhibit A is a true and correct

copy of the unavailable dates of IDWR employees as IGWA's counsel understands their schedules.

11. Counsel for A&B has agreed to reset the depositions on April 14 and May 1, 2008, but does not agree to reset any of the other depositions, although counsel for the other parties have advised A&B of conflicts on the other dates.

12. Lead counsel for IGWA, Randall C. Budge, is unavailable and out of the country from April 13 through April 28; yet, A&B is not willing to reset depositions on those dates. It is prejudicial to have IGWA's lead counsel out of the country and without email or telephone contact for consultation to assist in preparing for these depositions. None of IGWA's counsel is available for the deposition of Mr. Morse this coming Friday, April 11, 2008.

13. Further, as stated above, IGWA has cooperatively worked with A&B and the other parties to come to a mutually satisfactory hearing and pre-hearing schedule, including discovery deadlines.

14. IDWR's record upon which the Director relied for his January 29, 2008 Order is voluminous. Although IDWR has provided a disclosure of the names of the employees who worked on the January 29, 2008, order, tying the technical record to the findings and to the specific employee's knowledge requires some consultation with IGWA's experts. IGWA's experts are working through the information but the notice provided by A&B has not allowed for sufficient time for IGWA to consult with its experts. Reasonable notice should be based on the circumstances of a particular case and in this case, counsel on both sides have been able to reasonably accommodate multiple depositions among multiple counsel in the prior administrative delivery calls. There is no reason to expect that similar collaboration cannot exist here with just a modicum of effort by A&B's counsel.

15. Judicial economy and efficiency warrant that the deposition of the key IDWR employees be conducted in a manner that provides all parties with a fair and reasonable opportunity to prepare and participate in the development of facts, evidence, testimony and the record. Setting depositions without consultation with other counsel is inefficient and costly and would be an undue burden upon IDWR and its employees.

16. Continuing with the current schedule that requires out of town counsel to potentially travel to Boise for six weeks or forego their opportunity to participate in the depositions is prejudicial to IGWA and the other parties. The short notice has deprived IGWA to consult with other counsel who may share a common interest in the litigation to coordinate efforts, although initial discussions have already occurred with counsel for the City of Pocatello and Southwest Irrigation District.

REQUEST FOR RELIEF

IGWA respectfully requests that the current schedule be vacated and that the Hearing Officer require each of the parties to provide unavailable dates to all other counsel by Friday April 11, 2008, from which a deposition schedule can be set that reasonably accommodates the parties and IDWR witnesses and provides sufficient notice to all parties so that they may fully evaluate, prepare and participate in the deposition of IDWR employees.

To the extent the Hearing Officer believes oral argument is needed under this Motion, IGWA requests that it be heard on an expedited basis at the time and place set forth in the Notice of Hearing included herewith.

NOTICE OF HEARING

PLEASE TAKE NOTICE that IGWA will call up for hearing its MOTION FOR PROTECTIVE ORDER on **April 9th, 2008 at 10:00 a.m.** before hearing officer Gerald F. Schroeder at the office of the Idaho Department of Water Resources, 322 E. Front, Boise, Idaho. Parties wishing to participate by telephone may dial 713-577-1201 and key in participate code 260503.

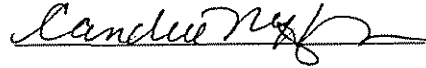
DATED this 7th day of April, 2008.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED


CANDICE M. MCHUGH

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2008, the above and foregoing was served by email to those having email address or by placing a copy in the U.S. Mail, postage prepaid and addressed to the following:



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██████████ represents unavailable dates

EXHIBIT A

	Neal Farmer	Bill Kramber	Tm Luke	Tony Morse	Rick Raymondi	Sean Vincent	Allan Wylie
4/1/2008							
4/2/2008							
4/3/2008			██████████	██████████			██████████
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