

Randall C. Budge (ISB # 1949)
Scott Smith (ISB # 6014)
Candice M. McHugh (ISB # 5908)
RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED
PO Box 1391
Pocatello, ID 83204-1391
Telephone: (208) 232-6101
Facsimile: (208) 232-6109

ATTORNEYS FOR IDAHO GROUND WATER
APPROPRIATORS

A. Dean Tranmer ISB # 2793
City of Pocatello
P. O. Box 4169
Pocatello, ID 83201
(208) 234-6149
(208) 234-6297 (Fax)
dtranmer@pocatello.us

Sarah A. Klahn, ISB #7928
Kelly L. Snodgrass
White & Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, Colorado 80202
(303) 595-9441
(303) 825-5632 (Fax)
sarahk@white-jankowski.com

ATTORNEYS FOR THE CITY OF POCATELLO

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE 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

**IGWA AND POCATELLO'S JOINT
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

COME NOW the Idaho Ground Water Appropriators, Inc., and its Ground Water District members, for and on behalf of their respective members (collectively "IGWA") and the City of Pocatello ("Pocatello"), through counsel, and hereby move the Hearing Officer pursuant to I.R.C.P. 56(b) for a determination that the Director properly exercised his discretionary authority

by evaluating A&B's claims of injury to its water right in the context of A&B's water right in its entirety, and not on a well- by-well system basis.

This motion is based upon undisputed material facts in the record and upon deposition testimony of A&B's Manager and expert witnesses as detailed in the accompanying *Memorandum in Support of Motion for Summary Judgment*. Because there are no material issues of fact, partial summary judgment is proper as a matter of law. In sum it is undisputed, that:

- a. the Partial Decree for A&B's 1948 priority water right no.36-2080 establishes multiple authorized points of diversion, any or all of which may be utilized to supply any or all of A&B's 62,604 irrigated acres within the described place of use;
- b. that transfer no. 72566 for A&B's 1948 priority water right no. 36-2080 establishes 188 authorized points of diversion that may be utilized to divert ground water to supply A&B's 62,604 irrigation acres within the described place of use;
- c. the water right pumped under the partial decree is appurtenant to all 62,604 acres.

Thus, the Idaho Department of Water Resources properly evaluated the elements of water right no. 36-2080 as decreed in its January 29, 2008 Order. Likewise, it properly evaluated A&B's claims of shortage by determining that the SRBA partial decree provides for multiple points of diversion, which may serve any of the 62,604 acres described in the water right decree.

Accordingly, in consideration of the decree, subsequent administrative transfer terms, and the undisputed factual record, IGWA and Pocatello respectfully request that the Hearing Officer rule as a matter of law that it is was proper and within the Director's authority and sole discretion to conclude that A&B's water right must be examined in its entirety, and not on a well-by-well system basis, in making a determination of material injury.

DATED this 3rd day of October, 2008.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED


CANDICE M. MCHUGH
Attorneys for Idaho Ground Water Appropriators

CITY OF POCA TELLO ATTORNEY'S OFFICE

By 
A. Dean Tranmer

WHITE & JANKOWSKI, LLP

By 
Sarah A. Klahn

Attorneys for the City of Pocatello