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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 IRRIGATION DISTRICT FOR THE DELIVERY OF GROUND WATER AND FOR THE CREATION OF A GROUND WATER MANAGEMENT AREA	))))))	DOCKET NO. 37-03-11-1 **SECOND AFFIDAVIT OF TRAVIS L. THOMPSON**

STATE OF IDAHO)
) ss.
County of Twin Falls)

TRAVIS L. THOMPSON, being first duly sworn upon oath, hereby deposes and says:

1. I am a duly licensed attorney representing A&B Irrigation District in the above-captioned matter.

2. I am over the age of 18 and have knowledge of the documents and legal proceedings pertinent to this matter.

3. A true and correct copy of an excerpts from the transcript of the deposition of Christian R. Petrich, Ph.D., dated September 24, 2008, is attached hereto as Exhibit A.

4. A true and correct copy of an excerpts from the transcript volumes I and II of the deposition of Dan Temple, dated June 25, 2008, is attached hereto as Exhibit B.

Dated this 29 day of October, 2008.

BARKER ROSHOLT & SIMPSON LLP

TRAVIS L. THOMPSON
Attorney for A&B Irrigation District

SUBSCRIBED AND SWORN to before me this 29 day of October, 2008.

JESSICA FORBIS NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Twin Falls
Commission Expires: 4/3/12

EXHIBIT A

Petrich Deposition

Tr. at p. 64, Ins. 11-15
Tr. at p. 66, Ins. 8-18

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PETITION FOR	)	
DELIVERY CALL OF A & B IRRIGATION	)	DOCKET No: 37-03-11-1
DISTRICT FOR THE DELIVERY OF	)	
GROUND WATER AND FOR THE CREATION	)	
OF A GROUND WATER MANAGEMENT	)	
AREA	)	
_____	)	

DEPOSITION OF CHRISTIAN R. PETRICH, Ph.D.

September 24, 2008

REPORTED BY:

COLLEEN P. KLINE, CSR No. 345

Notary Public

an authorized amount. It does not provide an amount that is somehow guaranteed. And that simply producing less water on a right, does not in and of itself indicate injury.

Q. You understand the prior appropriation doctrine in Idaho; what that means?

A. From a layperson's perspective, yes.

Q. What does it mean to you?

A. It would -- it's a basis for allocating water in times of shortage. And those with the most senior rights would have priority use.

Q. It doesn't matter what the supply is?

A. I think that that -- I mean, we're getting into an area that becomes more legal than hydrologic. That's also balanced with some of the components in the Ground Water Act that would look for encouraging full development of the resource.

Q. Are you qualified to offer an opinion on injury?

A. From a legal standpoint, no.

Q. From a technical standpoint?

A. I think the -- no, I would not be able to make the ultimate decision about injury. And I believe that that would go -- that

responsibility would rest with the Department.

Q. So your statement that pumping less than diversion rate, less than the volume, does not in itself represent injury. Do you have an opinion on what does represent injury?

A. Well, I think in this case, it -- the sentence speaks for itself. As far as injury, you know, just simply pumping less than an authorized amount, in my experience has not been deemed to be injury.

I'm not qualified to determine injury. The Department would. But the Department, I think, would typically look at things like reduced crop yields, or fallowed acres as signs of potential injury.

Q. Have you read the Conjunctive Management Rules' definition of material injury?

A. Not recently.

Q. Have you reviewed Hearing Officer Schroeder's prior decision describing what constitutes prior injury to a senior water right?

A. Not in detail.

Q. I guess on your general lay experience and your understanding of the Prior Appropriation Doctrine in Idaho, if the exercise of another

water right contributes to reduce water availability to a senior right, does that constitute injury?

A. Not automatically. I think that there -- I mean, there are a variety of criteria. So there would be a prior appropriation of a priority of the right. There would be some of the full economic use and development components under the Ground Water Act.

And the Department ultimately is the one that would balance those and make a decision. And at this point, I think we would have the Department's opinion in the form of the January order.

Q. I guess, how do you infer that .75 miner's inch per acre is sufficient to meet A & B's irrigation requirements?

A. I think there are several references to the three-quarter inch per acre. First, the motion to proceed stated that A & B is unable to divert the average of .75 of a miner's inch per acre, which is the minimum amount necessary to irrigate lands within A & B during peak periods when irrigation water is most needed. So the motion to proceed noted that that was sort of a

minimum peak demand.

Second, the annual reports, and it appears the internal accounting within A & B has been focused on the .75 threshold. I recognize that the .75 threshold has also been viewed as a sort of a basis for when rectification begins. But the .75 written concept comes from, in part, the motion to proceed, which states this is the minimum amount during peak periods that is necessary to irrigate lands within A & B.

Q. So nothing based on your own review or technical analysis of an irrigation requirement?

A. I have not done an irrigation requirement analysis personally for the A & B project.

Q. And on page 5, you've referenced that .75 miner's inch as a delivery standard. And I guess other than the -- I guess where do you come up with that term, "delivery standard"?

A. Could you point me to the paragraph where I've got that? I just need to read the context.

Q. That second to last paragraph, you talk about a delivery of more than .75 inches per acre, if not ideal, is sufficient based on

A & B's internal standard.
A. Okay. It appears that with annual reports -- starting in whatever year they began, it was 1962 or so through current -- has measured the performance of wells based on the delivery of either .73 or .75 inches per acre. And to me that began looking like a general internal standard that was being used by A & B to track performance within its system.
Q. Let's take a look at Exhibit 64. I believe that's the 2007 pump report.
A. Okay. I'm sorry. 67?
Q. 64.
A. 64. (Witness complying.)
Q. Do you recognize and understand this document?
A. Okay.
Q. Have you seen it before?
A. Yes.
Q. And looking over at, I guess, the criteria available per acre at the turnout, that 2007 column at the far right?
A. Okay.
Q. You understand what's being represented there?

A. I believe so.
Q. And is that a delivery per acre at the headgate to A & B landowners?
A. That would be, I believe, a delivery per irrigable acre at the headgate based on acres as A & B has tabulated them, and based on A & B's flow records.
Q. And would you agree that A & B can physically deliver more than .75 miner's inch per acre at these various well systems where that criteria is above that?
A. I think in some of those, it can, yes. And, in fact, does.
Q. So do you agree for those well systems where they deliver more than that, that the .75 miner's inch is not a maximum rate of delivery on those systems?
A. Yes.
Q. Let's take a look at the order, Exhibit 1. You can keep that out, too, please.
A. (Witness complying.)
Q. I'm on page 43, paragraph 23.
A. (Witness complying.) Okay.
Q. If you could read that second sentence in that paragraph?

A. (Witness complying.) Okay. Let me just put the first sentence in the record, too. "In motion to proceed, A & B asserts that .75 of a miner's inch is 'the minimum amount necessary to irrigate lands within A & B during the peak (sic) periods when irrigation water is most needed.' However, the USBR, which developed the A & B project, stated in a 1985 report that 0.75 of a miner's inch is the maximum rate of delivery."
Q. So would you agree that conclusion is factually incorrect?
A. I agree that some of the well systems are able and do deliver more than 0.75 of a miner's inch per acre.
Q. So the .75 is not a maximum physical capacity A & B has in its well systems?
A. I believe that's correct.
Q. Okay. I guess, what's the basis for your statement that A & B can meet crop needs with the delivery rate of less than 1;100 cfs?
A. Are we through with this (indicating)?
Q. Yes.
A. And could you please refer me to the statement in my report?

Q. Page 6, just the top of the page.
A. (Witness complying.) I think that there are several things there. First of all, A & B has been delivering less -- or has been delivering less than 1,100 cfs and has -- there has been no evidence that I have seen of either fallowed acres, or reduced yields as a result of being less than 1,100 cfs.
It appears -- and I have not followed these previous cases or decisions closely -- but it appears that five-eighths of an inch has been accepted as an appropriate delivery rate in other areas that are not far distant from A & B. And so it appeared to me that A & B, you know, for those reasons, has been able to meet needs with a delivery rate that's been less than 1,100 cfs.
Q. What do you define as "crop needs" in that statement?
A. In what context, I think what I'm referring to is, a sufficient amount of water to produce crops, if the amount of water was insufficient, then one would anticipate that there would be acres that could not be irrigated, or that would have been made fallow -- or would have been fallow because of an insufficient water

EXHIBIT B

Temple Deposition

Tr. Vol. I, p. 43, Ins. 1-25
Tr. Vol. II, p. 269, Ins. 23-25
Tr. Vol. II, p. 270, Ins. 1-16
Tr. Vol. II, p. 278, Ins. 1-8

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF THE)
PETITION FOR DELIVERY CALL) Docket No. 37-03-11-1
OF A&B IRRIGATION DISTRICT)
FOR THE DELIVERY OF GROUND)
WATER AND FOR THE CREATION)
OF A GROUND WATER)
MANAGEMENT AREA)
)

DEPOSITION OF DAN TEMPLE, VOLUME I

June 24, 2008

REPORTED BY:

AMY HORSLEY, C.S.R. No. 714, R.P.R.
Notary Public

volume.
Q. Okay. You used the term "well system pumping capacity." What does that mean?
A. It's the pump or pumps', if it's a dual pump system, maximum pumping capacity at any given time.
Q. So it's the mechanical capacity of the equipment?
A. I don't know if that's -- I don't know if that's correct. The pump may have a mechanical, in your words, pumping capacity greater than it's pumping. Because of water table declines, it's pumping less than its mechanical capacity or its hydraulic design.
Q. So how did you determine what that well system pumping capacity is, or how was that determined, I guess I should say, for this table?
A. It's determined with measuring the flow from the pump or pumps' discharge.
Q. Is that flow measured in pumping rate as well as hours per day for each of the pumping rates? Does that make sense?
A. Yes. It's a combination of both, but to get this, it's just the instantaneous flow.
Q. Okay. While in the course of an entire

irrigation season, which instantaneous flow, then, do you take for the information in this column?
A. This would be based on the low flow of the season.
Q. Okay. So is that related to the next column over, Low Pump Rate Under Full Discharge Typical in Midseason Pumping?
A. Yes.
Q. How are those two columns different? I mean I see they are different looking down them, but how do they end up with different numbers in them?
A. The fourth column, Inches Required to Deliver .75, that's the inches we need to -- the minimum amount we need to meet three quarters.
Q. Um-hmm.
A. The next column over is the actual low flow measured during that given year.
Q. In 1981 were there constant data recorders on these pumps that would allow you to basically look at the entire five months of pumping and pick out the low one, or is it more of a guess?
A. There's not data recorders. Our system

is -- all our delivery system is a lock system controlled by district staff. So once the ditchrider regulates the flow to meet the demand, there is no change in that system for 24 hours, excluding power outages or emergency shutoffs.
Q. Okay.
A. And so he measures that, sets it, regulates that, measures it the next day, records it and continues that cycle seven days a week throughout the irrigation season.
Q. Okay. So let's take a hypothetical well on one of these polygons. And I'm sorry, the ditchrider, is that what you called them?
A. Our terminology is ditchriders.
Q. Okay. The ditchrider comes and sets the pump on June 1st for some rate of production, and I'm not even going to worry about what that is. That pump runs for 24 hours at that rate of production no matter what; is that right?
A. Excluding the power outages and emergencies, yes.
Q. Sure. Okay. And then on June 2nd he may change that?
A. He will reregulate it according to water user demands.

Q. Okay. But the pumps run 24 hours?
A. Yes.
Q. Okay. How often is the instantaneous flow rate measured?
A. It's measured daily.
Q. But it would be at that moment when the ditchrider is there?
A. Yes, once a day.
Q. Okay.
A. And we do have water masters and we do have a hydrographer that are going out and making periodic measurements across the project on these wells. So it could be measured twice in a day, but the rider measures it and regulates it once.
Q. So let's explore that for a minute. So you've got the ditchrider's records, and he's presumably recording the time he's there?
A. Yes, it's logged.
Q. And then there's -- so we know what the instantaneous rate is at 8:00 in the morning or whatever time he's there for the season, but then there might be these spot measurements, which are a different set of data that are kept by the water master or the hydrographer?
A. The hydrographer, he would keep his.

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF THE	)	
PETITION FOR DELIVERY CALL	)	Docket No. 37-03-11-1
OF A&B IRRIGATION DISTRICT	)	
FOR THE DELIVERY OF GROUND	)	
WATER AND FOR THE CREATION	)	
OF A GROUND WATER	)	
MANAGEMENT AREA	)	
_____	)	

COPY

DEPOSITION OF DAN TEMPLE, VOLUME II

June 25, 2008

REPORTED BY:

AMY HORSLEY, C.S.R. No. 714, R.P.R.
Notary Public

wet, average and dry years. A typical expectation would be that the efficiencies would increase in a dry year when there was less water available and decrease in a dry year when there was more water available. Instead, the reverse relationship occurs."

Do you have any understanding or explanation you could provide on that comment, why that is the case?

A. No, I'm not sure what they're referring to there. I can't respond to that.

Q. Let's move on to the bottom of page 35. That very last sentence that continues on to the top of page 36 states as follows: "When demand exceeds capacity, the water users are allocated water on an equal-share basis according to irrigable acres."

Is the irrigable acres that you're referring to there those that were certified originally by the Bureau when the project was developed as being irrigable, or is that a current irrigable number?

A. It's -- you are correct. It's the original acres certified by Reclamation as irrigable.

Q. So is this describing that water is received on a continuous flow basis by the users as opposed to a rotational basis? It says they get it on an equal share.

A. Well, it says, "When the demand exceeds capacity, the water users are allocated water on an equal-share basis according to the" -- it's a prorated basis depending on the deliverable amount from the well system.

Q. So it would be a prorated reduction to whatever the supply is that's available?

A. Yeah, they get their prorated share of that supply that is available amongst the acres in that system.

Q. But they still -- the farmers still take water on a continuous flow basis; they don't -- one person goes on, and another one comes off, and you rotate between them?

A. No. They call, demand the water; they can take as long as they want. They're not forced off on a rotation basis. It's at their choice.

Q. In the middle of that page 36 after the bullet points, a comment is made, "The district has abandoned six production groundwater wells

and relied on other district water sources in order to reliably deliver water to the district's assessed irrigable acreage."

Do you see that sentence?

A. Yes, I do.

Q. What was the source of water that was utilized to offset those that were abandoned? Would that be other wells that are producing above what the needs are?

A. No. That is referring to abandoned wells in the west end of the project, as of this time frame of this report, that are receiving the surface water supplies that the district has moved out there.

Q. What would be the conversion acres?

A. The conversion acres is correct.

Q. We had some discussion yesterday about a number of the wells that are underproducing less than the .75 that the district policy would prefer to achieve. Do you know about how many wells have the ability to produce more than the .75 inches per acre of those operating wells, just a rough percent of how many of them are under and how many can produce more than that?

A. Well, first of all, it will depend on

which year. That has changed yearly because of the wells that continue to fall below that and wells that are worked on and brought above that. So I would need a year, but I believe the Motion to Proceed talked about -- I think it's 39 wells that were below it in 2006. So it would be the difference between the 39 and the 177 that were above.

Q. Okay. Yeah, we had that exhibit yesterday, if I can find it. The list of the underproducing wells would simply be a --

A. Yeah, Item G lands. And I believe it was 39 in 2006.

Q. One would simply need to take those underproducing wells on a year-to-year basis that you have identified, if I can find that exhibit, and subtract those from the total wells, and that would give you the number that would be overproducing in that particular year?

A. That is correct, but I wouldn't say overproducing. Were producing more than the .75.

Q. Correct.

(Discussion held off record.)

Q. (BY MR. BUDGE) Okay. Looking at Exhibit 56 that's entitled "Well Systems With

and, again, make the assumptions by looking at the water table elevations and the hydrographs and compare that to past years to determine if the aquifer was in a decline or if it was in an increase.

Then you would have to look at the pump records to see if there was mechanical problems with the pumps. If you could rule that out, then you can make an assumption the decline may or may not have been caused by aquifer, but I would just have to be on a case-by-case basis.

Q. Okay. Yeah, you haven't done any analysis that you would have knowledge based on your review of the record of what was going on back in the '60s that would cause those shortages in those units?

A. No.

Q. The Motion to Proceed that A & B filed made this statement on pages 7 and 8: It says, "A & B will continue to suffer water shortages, and these shortages will become more severe as groundwater levels in the ESPA continue to decline."

To your knowledge, is that comment referring to shortages during the peak of the

season, or are you also referring to shortfalls that contend in both the spring and the fall?

A. It would have to deal with, I guess, both. There are particular well systems that have shortages all through the irrigation season now, and there are others where well system shortages are suffered through the peak.

Q. And so in making that statement, then, Dan, you're saying that shortages relate to instantaneous production rates as well as annual average volumes? In other words, there's times throughout the season that some of those systems, if you did an instantaneous measurement, are simply going to be below that objective level of .75 inches?

A. And so what was the question on that statement?

Q. Yeah, let me rephrase that. That was a poor question. When you refer to a shortage becoming more severe, do you come to that conclusion based upon instantaneous production rates, or are you looking at annual production volumes from a particular unit?

A. Again, it would be both. The instantaneous leads to shortages in annual.

Q. Okay. That Petition to Reconsider that A & B filed also makes a comment on page 6 that you had converted about 1,446 acres from groundwater to surface water -- excuse me, 1,447 acres got converted. Has that number changed since then?

A. That was an incorrect number installed in there. The correct number is 1,377.8 acres.

Q. Okay.

MR. THOMPSON: What petition are you referring to, Randy?

MR. BUDGE: It was the Petition to Reconsider on page 6.

MR. THOMPSON: Requesting hearing, the 72, Exhibit 72?

MR. BUDGE: Yeah.

THE WITNESS: I still stand with the answer.

Q. (BY MR. BUDGE) Are there any plans to increase the number of conversion acres to deal with your problems in that southwest area?

A. No, there are not.

Q. Are there limitations to how much surface water there is available to supply conversion acres in the B unit?

A. There could be limitations on water available. There are limitations on system and pumping capacities.

Q. And what's the source of that conversion water?

A. Surface water.

Q. Is that water that you lease from the Upper Snake, or is that under the company -- excuse me, under the district's natural flow rights?

A. It's not leased water. It could be storage water or our -- yeah, storage water.

Q. So it's the district's own water?

A. Yes.

Q. When A & B speaks in some of its pleadings that we've discussed of water shortages, what are some of the reasons that A & B believes that the water shortages exist? What are some of the causes?

A. What are the causes of our water shortages?

Q. Um-hmm.

A. It's the aquifer declines that have occurred caused by junior pumping.

Q. So pumping would be a part of that.