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DEPARTMENT OF
WATER RESOURCES

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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 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)

Docket No. CM-DC-2010-001

**A&B IRRIGATION DISTRICT'S
PETITION FOR RECONSIDERATION
AND REQUEST FOR HEARING RE:
APRIL 2016 AS APPLIED ORDER**

COMES NOW, A&B Irrigation District (hereafter referred to as "A&B" or "District"),
by and through counsel of record, and hereby requests reconsideration and a hearing on the
Director's *Final Order Regarding April 2016 Forecast Supply (Methodology Steps 1-3)* ("April
Order") issued on April 19, 2016. The petition is filed pursuant to Idaho Code § 67-5246, Idaho
Code § 42-1701A(3), and the Department's rules of procedure (IDAPA 37.01.740.02).

BACKGROUND

The Director issued the *April Order* implementing Steps 1 - 3 of the SWC conjunctive administration methodology on April 19, 2016. The Director predicted in-season material injury to TFCC in the amount of 44,200 acre-feet. The Director identified A&B's "proportionate share" of the predicted injury to be "3,463 acre-feet." *April Order* at 5, n. 4. No explanation is given in the order regarding the method and calculation of the "proportionate share." IDWR later published "background data" on its website concerning the apportioned shortfall between junior priority ground water rights subject to the order.¹ The data includes various modeling files and maps. In addition, IDWR included an excel spreadsheet that depicts the "predicted impact of ABID junior use" as "7.8%." No further explanation of the method or calculation is given.

PETITION FOR RECONSIDERATION

A&B requests reconsideration of the Director's calculation that A&B's "proportionate share of the predicted DS of 44,200 acre-feet is 3,463 acre-feet." *April Order* at 2016. A&B is unclear as to the basis for the Director's method and calculation to determine the "proportionate impact" of A&B's ground water rights junior to February 8, 1989 as compared to other junior ground water rights. A&B does not understand how IDWR arrived at the "7.8%" number.

A&B should only be responsible for the predicted injury caused by its junior priority ground water rights subject to the *April Order* on the Near Blackfoot to Minidoka reaches of the Snake River. A&B has five "enlargement" water rights affected by the *April Order* that authorize the irrigation of 2,063.1 acres (water right nos. 36-15127B, 36-15193B, 36-15194B, 36-15195B, and 36-15196B). Even using ESPAM 2.1's average annual crop irrigation requirement of 2.46 af assigned to the A&B area, irrigation of the acres by the junior rights would equal an annual depletion of 5,075 acre-feet. The "proportionate share" identified by the

¹ See <http://www.idwr.idaho.gov/News/WaterCalls/Surface%20Coalition%20Call/>

Director would equal about 68% of the total estimated depletion. A&B does not believe the impact of its junior rights equals 68% of their total annual use, or 3,463 acre-feet on the Near Blackfoot to Minidoka reaches. *See e.g. March 29, 2016 Post Audit Memo (Rangen Call) (Jennifer Sukow)* (showing simulated impact of A&B conversion projects of 1,377 acres on Near Blackfoot to Minidoka reach to be approximately 34%). Moreover, in connection with A&B's mitigation plan for the Rangen Call Brockway Engineering modeled the total depletion for the enlargement water rights as 4,340 acre-feet (2.1 afa). The predicted impact on the Near Blackfoot to Minidoka reaches was estimated as 1,791 acre-feet, or approximately 41% of the total depletion. Using that percentage A&B should only be responsible to mitigate for 2,115 acre-feet (even assuming that IDWR's number of 2.46 afa and 5,075 af is correct).

Consequently, A&B requests the Director to re-calculate the "proportionate impact" based upon the predicted impact of A&B's ground water rights junior to February 8, 1989 on the Near Blackfoot to Minidoka reaches of the Snake River.

Finally, the Director failed to consider the impacts caused by hydraulically connected junior ground water rights tributary to the Snake River but that are not within the defined "area of common ground water supply." Rule 50. Irrespective of the rule, the Director has the duty and obligation to use the best available science in water right administration, which he acknowledges is ESPAM 2.1. *See April Order* at 5, n. 3. ESPAM 2.1 defines the Eastern Snake Plain Aquifer differently than the CM Rules, which was promulgated over 20 years ago. *See CM Rule 50.01*. The rule admittedly fails to account for the best available science to the detriment of junior ground water users like A&B.² By excluding certain juniors from administration the Director has artificially enlarged the mitigation obligation of A&B contrary to Idaho's

² The Director attempted to repeal Rule 50 during the last legislative session. Although the Legislature rejected the Director's proposed rule change that does not excuse unconstitutional water right administration. Even the Legislature cannot override what the constitution requires.

constitution and water distribution statutes. Stated another way, if all hydraulically connected juniors were being appropriately administered, A&B's "proportionate share" of the mitigation obligation would be lower. The application of the CM Rules in such a manner is unconstitutional and should be reconsidered.

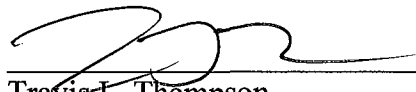
REQUEST FOR HEARING

To the extent the Director denies the above request for reconsideration to identify an accurate "proportionate share" regarding A&B's junior priority ground water rights with respect to the predicted demand shortfall, including appropriately identifying all hydraulically connected junior ground water rights, A&B requests a hearing on the same pursuant to Idaho Code § 42-170A(3).

Further, in order to avoid unnecessary delay and further litigation, A&B and its consultants are available and would be willing to participate in an informal meeting with IDWR the other parties to review and better understand the Director's findings and methods used regarding this issue.

DATED this 2nd day of May, 2016.

BARKER ROSHOLT & SIMPSON LLP



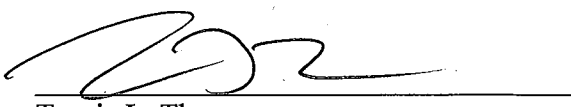
Travis L. Thompson

Attorneys for A&B Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that on this 27 day of May, 2016, I served a true and correct copy of the foregoing *A&B Irrigation District's Petition for Reconsideration and Request for Hearing re: April 2016 As Applied Order* on the following by the method indicated:

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