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Attorneys for Unit A Association

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE NORTH
SNAKE AND MAGIC VALLEY GROUND
WATER DISTRICTS' 2009 JOINT
MITIGATION PLAN FOR 2009
(Blue Lakes)

Docket Nos. CM-MP-2009-002

IN THE MATTER OF A&B IRRIGATION
DISTRICT'S RULE 43 MITIGATION PLAN

(Water Right Nos. 36-02356A, 36-07210, and
36-07427)

**AFFIDAVIT OF ERIKA E. MALMEN IN
SUPPORT OF UNIT A ASSOCIATION'S
MOTION FOR SUMMARY JUDGMENT**

STATE OF IDAHO)
 : ss.
County of Ada)

ERIKA E. MALMEN, being first duly sworn upon oath, deposes and says:

1. I am one of the attorneys for Unit A Association in the above-entitled action.

I have personal knowledge of and am competent to testify to the matters stated herein and the documents attached hereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of A&B Irrigation District's Rule 43 Mitigation Plan, filed on August 18, 2009.

3. Attached hereto as **Exhibit B** are relevant excerpts from the A&B Irrigation District's Responses to Unit A Association's First Discovery Requests, served on February 1, 2010.

4. Attached hereto as **Exhibit C** are true and correct copies of State of Idaho License and Certificate of Water Right license No. 01-2064, dated March 30, 1921, and State of Idaho Department of Water Administration License of Water Right No. 01-2068, dated July 28, 1939.

5. Attached hereto as **Exhibit D** are relevant excerpts from the Request for Approval of Mitigation Plan of A&B Irrigation District, filed on May 12, 2005.

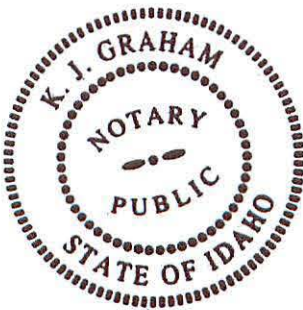
6. Attached hereto as **Exhibit E** are relevant excerpts from the Direct Testimony of Gary Ottman, submitted on behalf of Unit A Association, dated February 1, 2010.


7. Attached hereto as **Exhibit F** are relevant excerpts from the Reply Testimony of Dan Temple, submitted on behalf of A&B Irrigation District, dated February 16, 2010.

DATED: February 19, 2010


Erika E. Malmen

SUBSCRIBED AND SWORN TO before me this 19th day of February, 2010.




Notary Public for Idaho
Residing in MERIDIAN, IDAHO
My Commission Expires: 02/05/13

CERTIFICATE OF SERVICE

I, the undersigned, certify that on February 19, 2010, I caused a true and correct copy of the within named document to be forwarded with all required charges prepaid and properly addressed, by the method(s) indicated below, in accordance with IDAPA 37.01.01.303, to all of the parties of record in this proceeding, as follows:

Gary Spackman, Interim Director
Idaho Department of Water Resources
322 East Front Street
PO Box 83720
Boise, Idaho 83720-0098

Hand Delivery
U.S. Mail
Facsimile: (208) 287-6700
Overnight Mail
Email: deborah.gibson@idwr.idaho.gov
phil.rassier@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

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Daniel V. Steenson
Charles L. Honsinger
Ringert Clark
PO Box 2773
Boise, Idaho 83701-2773

Hand Delivery
U.S. Mail
Facsimile: (208) 342-4657
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Email: dvs@ringertlaw.com
clh@ringertlaw.com

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Sarah W. Higer
Barker Rosholt & Simpson LLP
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PO Box 485
Twin Falls, Idaho 83303-0485

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Facsimile: (208) 735-2444
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Email: tlt@idahowaters.com
pla@idahowaters.com
swh@idahowaters.com

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A. Dean Tranmer
City of Pocatello
PO Box 4169
Pocatello, Idaho 83201

Hand Delivery
U.S. Mail
Facsimile: (208) 239-6986
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Email: dtranmer@pocatello.us

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<input type="checkbox"/>
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<input checked="" type="checkbox"/>

City of Pocatello

Represented by:

Sarah A. Klahn

White & Jankowski LLP

Kittredge Building

511 16th Street, Suite 500

Denver Colorado 80202

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Facsimile: (303) 825-5632

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Email: sarahk@white-jankowski.com

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<input type="checkbox"/>
<input checked="" type="checkbox"/>

Randall C. Budge

Candice M. McHugh

Racine Olson Nye Budge & Bailey

201 East Center, Suite A2

PO Box 1391

Pocatello, Idaho 83204-1391

Hand Delivery

U.S. Mail

Facsimile: (208) 232-6109

Overnight Mail

Email: rcb@racinelaw.net

cmm@racinelaw.net

<input type="checkbox"/>
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William A. Parsons

Parsons, Smith & Stone, LLP

137 West 13th Street

PO Box 910

Burley, Idaho 83318

Hand Delivery

U.S. Mail

Facsimile: (208) 878-0146

Overnight Mail

Email: wparsons@pmt.org

<input type="checkbox"/>
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Robert A. Maynard

Erika E. Malmen

Cynthia L. Yee-Wallace

Affidavit of Erika E. Malmen in Support of Unit A Association's Motion for Summary Judgment

Exhibit A

RECEIVED

AUG 18 2009

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
Sarah W. Higer, ISB #8012
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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 WATER RIGHT NOS. 36-
02356A, 36-07210, AND 36-07247

(Blue Lakes Delivery Call)

)
)
) **A&B IRRIGATION DISTRICT'S**
) **RULE 43 MITIGATION PLAN**
)
)
)
)
)

COMES NOW, A&B IRRIGATION DISTRICT ("A&B"), by and through its counsel of record, BARKER ROSHOLT & SIMPSON LLP, and hereby submits this Mitigation Plan ("Plan") pursuant to Rule 43 of the Department's Conjunctive Management Rules (37.03.11.43) in the above-captioned matter for A&B's water rights 36-15127B, 36-15193B, 36-15194B, 36-15195B, and 36-15196B ("Enlargement Rights"). As detailed below, diversion of ground water under A&B's Enlargement Rights (with a 1994 subordination condition) is fully mitigated by the substitute curtailment actions performed within the A&B project and therefore the water rights should not be curtailed in response to Blue Lakes' water delivery call.

MITIGATION PLAN

I. Name and Address:

A&B Irrigation District
P.O. Box 675
Rupert, Idaho 83350-0675
(208) 436-3152

II. Water Rights to be Mitigated By Plan:

36-15127B
36-15193B
36-15194B
36-15195B
36-15196B

III. Description of Plan:

A&B has curtailed the diversion of groundwater under its senior priority water right (36-2080) for the irrigation of 1,377.8 acres within the Unit B portion of the Irrigation district. See Ex. A. Although A&B is seeking to continue to serve these acres with groundwater through its senior priority right (36-2080, September 9, 1948 priority), diversion and use of water by other junior priority ground water rights within the Eastern Snake Plain Aquifer ("ESPA") has injured A&B's water right and prevented the continued use of groundwater on those acres.¹

A&B has converted the 1,378 acres (Ex. A) from groundwater to a surface water supply of A&B Irrigation District, consisting of stored water in American Falls and Palisades Reservoirs (water rights as recommended in the SRBA Court, 1-2064, 1-2068). Pursuant to analysis performed by IDWR using the Eastern Snake Plain Aquifer Model (ESPAM), diversion of groundwater for the acres served by A&B's Enlargement Rights (2,063 acres), would result in a

¹ A&B's water right delivery call for water right 36-2080 is subject to a separate administrative proceeding before IDWR entitled *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 Groundwater Management Area*.

depletion to the Devil's Washbowl to Buhl ("DWB-BUL") reach of 921 acre-feet per year. *See* Ex. B.² Using the same analysis, A&B's conversion of the 1,378 acres from groundwater to a surface water supply would result in an increase of 1,055 acre-feet per year to the DWB-BUL reach. *See id.* In addition, A&B's use of surface water on the acres previously irrigated with groundwater provides additional incidental recharge to the ESPA in the amount of 341 acre-feet per year to the DWB-BUL reach. *See id.* Finally, A&B has enrolled 121 acres in the federal CREP program (Ex. C identifies acres), which results in 42 acre-feet per year to the DWB-BUL reach. *See* Ex. B. Therefore, ground water will be voluntarily curtailed under water right 36-2080 and will no longer be used on those acres for the duration of the program. Consequently, A&B's depletion and benefits from its mitigation actions are detailed as follows:

Depletions:

<u>Action</u>	<u>Impact to DWB-BUL Reach</u>	<u>Impact to Blue Lakes</u>
GW Irrigation - 2,063 acres	1.3 cfs / 921 af	0.26 cfs / 184 af (20% reach)
Total Mitigation Obligation	1.3 cfs / 921 af	0.26 cfs / 184 af (20% reach)

Mitigation Benefits:

<u>Action</u>	<u>Benefit to DWB-BUL Reach</u>	<u>Benefit to Blue Lakes</u>
Conversions - 1,378 acres	1.5 cfs / 1,055 af	0.30 cfs / 211 af (20% reach)
Incidental Recharge	0.5 cfs / 341 af	0.10 cfs / 68 af (20% reach)
CREP	0.06 cfs / 42 af	0.01 cfs / 8.4 af (20% reach)
Total Mitigation Performed	2.06 cfs / 1,438 af	0.41 cfs / 287.4 af (20% reach)

² The analysis was completed prior to the approval of Transfer No. 75339 which added points of diversion to A&B's water right 36-2080. Presently there are 195, not 188 points of diversion.

As detailed above, A&B's actions completely mitigate for the depletions resulting from the use of the Enlargement Rights. The Mitigation Plan provides replacement water "at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy" Blue Lakes' water rights. See CMR 43.03.b. The Plan is based upon appropriate simulations and calculations using the ESPAM, and such simulations and calculations were performed by Dr. Allan Wylie (IDWR). See CMR 43.03.c; Ex. B. The simulations and calculations were further reviewed by Dr. Charles E. Brockway (Brockway Engineering PLLC). See Exs. B, D.

REQUEST FOR RELIEF

A&B hereby requests the Director to approve this plan in conformance with the procedures and criteria set forth in CMR 43.

DATED this 18th day of August, 2009.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson
Paul L. Arrington
Sarah W. Higer

Attorneys for A & B Irrigation District

Exhibit
A

A&B Irrigation District

Unit B Lands Converted to Surface - 1377.8 acres

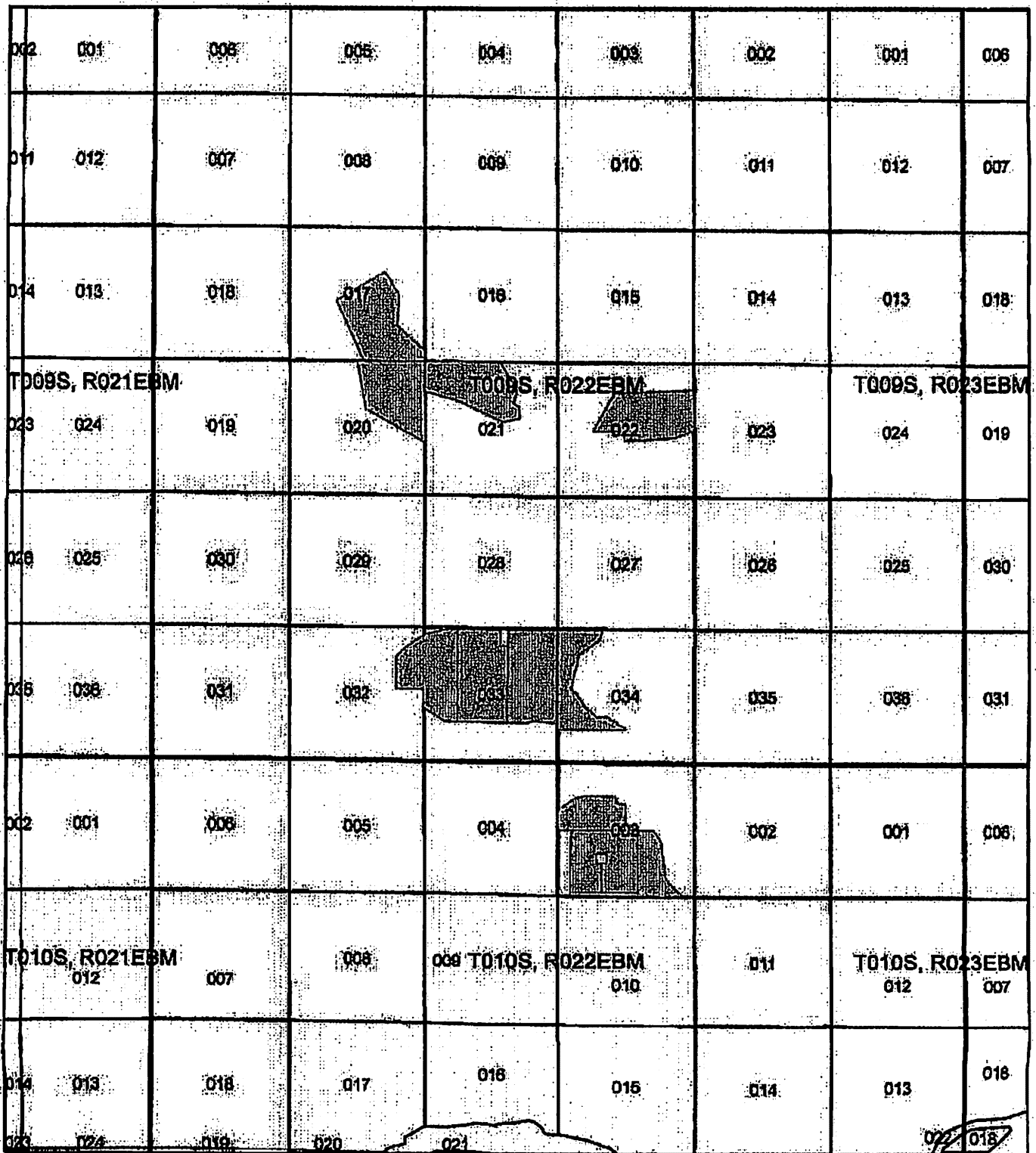
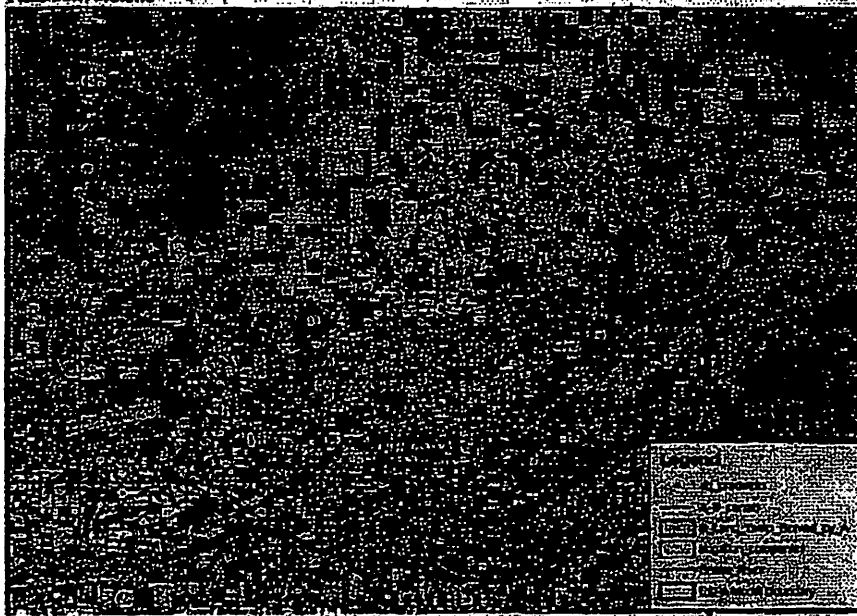


Exhibit B

A&B conversions

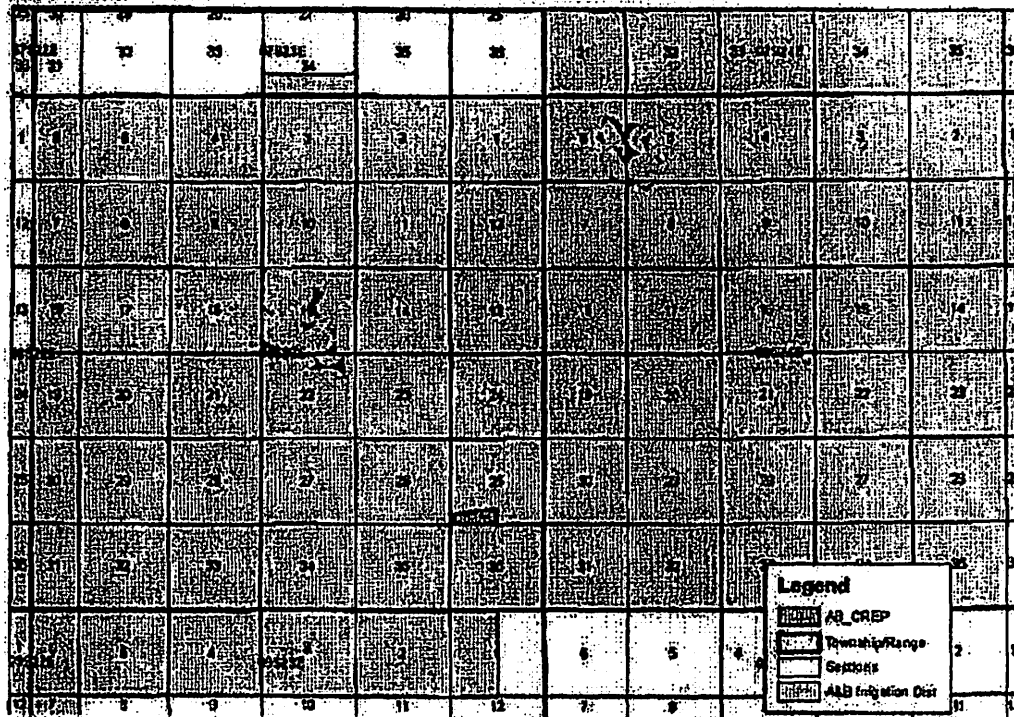


B_lands_served_A from 'Item Q from Directors request'
select model cells introduced by 'B_lands_served_A'
apportion 3870.27 ac-ft (from A&B mitigation plan) by converted acres

irr_area	Benefit	ft/ac/yr
m ²	481,888 ft ³ /d	
1,378 ac	3,873 ac-ft/yr	2.810834

reach	cfs gain	ac-ft/yr
A-R	0.1	39
H-S	0.1	45
S-B	0.5	338
B-N	1.6	1,180
N-M	0.6	414
DWB-BUL	1.5	1,055
BUL-KSP	0.5	356
KSP	0.3	221
KSP-MLD	0.0	24
MLD	0.3	194
MLD-BAN	0.0	7
sum	6.3	3,873

A&B CREP



Irr_area Non-Depletion
 468390.7 25,486 ft³/d
 121 214 ac-ft/y
 ft³/ac/yr 1.770855

reach	cfs gain	ac-ft/y
MLD-BAN	0.000	0
MLD	0.013	9
KSP-MLD	0.002	1
KSP	0.014	10
BUL-KSP	0.022	16
DWB-BUL	0.058	42
A-R	0.004	3
H-S	0.004	3
S-B	0.031	23
N-M	0.038	27
B-N	0.109	79
sum	0.29	213.71

Exhibit C

030	029	028	027	026	025	030	029	028	027	026	025	030
T007S, R022EBM		T007S, R023EBM				T007S, R024EBM		T007S, R025EBM				
031	032	033	034	035	036	031	032	033	034	035	036	031
006	005	004	003	002	001	006	005	004	003	002	001	006
007	008	009	010	011	012	007	008	009	010	011	012	007
018	017	016	015	014	013	018	017	016	015	014	013	018
T008S, R022EBM		T008S, R023EBM				T008S, R024EBM		T008S, R025EBM				
019	020	021	022	023	024	019	020	021	022	023	024	019
030	029	028	027	026	025	030	029	028	027	026	025	030
031	032	033	034	035	036	031	032	033	034	035	036	031
006	005	004	003	002	001	006	005	004	003	002	001	006
T009S, R022EBM		T009S, R023EBM				T009S, R024EBM		T009S, R025EBM				
007	008	009	010	011	012	007	008	009	010	011	012	007

Exhibit D

Review of IDWR Analysis of A&B Depletions C.E. Brockway P.E. Brockway Engineering August 6, 2009

Allan Wyle of IDWR analyzed the impacts on the Snake River of ground water use by A&B Irrigation District due to pumping and irrigation on 2,063 expansion acres (pursuant to junior priority enlargement water rights) and the additions to the aquifer and Snake River due to the conversion of 1,378 acres from ground water irrigation to a surface water source through the A Canal system.

The analysis of depletions assumed a net consumptive use of 2.10 af/ac/year with a total depletion of 4,340 af/year. It was assumed that the net depletion was distributed uniformly throughout the 188 wells of the A&B system and the ESPAM model nodes within which the wells were located (i.e. approximately 11 acres per node). Since the 2,063 acres are spread throughout the district in varying amounts at various locations, this approach is reasonable. The ESPAM model was then used to simulate the steady state depletions within the 11 reaches of the Snake River from Ashton to Bancroft spring. The Devils Washbowl to Buhl reach simulated steady state depletion was calculated at 921 af/year or 1.3 cfs.

The ESPAM model was not run for this review by Brockway Engineering. However, the approach is reasonable and the output distribution and total steady state depletion matches the input depletion.

The analysis by IDWR of the impact of conversion of 1,378 acres from ground water irrigation to surface water irrigation from the A system assumed that the converted acres were located in 4 areas as depicted by the A&B Irrigation District (the location of the converted acres). These areas were then located in the proper ESPAM nodes and the model run at steady state. The net positive input per acre to the aquifer was determined by dividing the reported annual (2006) volume delivered to the conversion acres by A&B (3,873 af) by the acres converted (1,378 ac) to get a value of 2.81 af/acre. This value includes the consumptive use forgone by not pumping from the aquifer and deep percolation of the additional 0.71 af/acre due to decreased application efficiencies occurring with surface irrigation.

This analysis shows a net positive impact on the Devil's Washbowl to Buhl reach of 1,055 acre feet/year and the steady state total gain is equal to the 3,873 gross delivery to the converted acres. The ESPAM model was not run by Brockway Engineering for this review. The assumptions are reasonable and the output distribution and total steady state depletion matches the input.

The analysis of the contribution from canal conveyance loss by IDWR assumed that the irrigation water for the conversion acres was delivered by the most direct route from Snake R to "B lands served A from ABCanals" and assumed a 30% loss of the reported deliveries, purported to be the same as Northside Canal Company.

A better estimate of the conveyance loss can be achieved by using the Worstell method as outlined in the Hubble report. This analysis was used in the Surface Water Coalition Expert Report of September 26, 2007. Utilizing data from that report, Brockway Engineering PLLC estimated the losses in the Main A

canal and laterals used to deliver to the converted acres. Canal and lateral widths were digitized and the Worstell equation, utilizing the wetted area and seepage rate for the Portneuf silt loam soils, was used to calculate losses. This analysis showed that the total seepage loss in the canal system to the converted acres is about 22 percent of the system capacity. Therefore, an estimate of 22% loss in the reach is more justifiable than the 30% loss assumed by IDWR.

The attached spreadsheet with aerial photo shows the Brockway Engineering analysis and the IDWR analysis. Using the reduced 22% estimated loss to the converted acres results in an estimated positive impact in the Devil's Washbowl to Buhl reach of 250 acre feet per year compared to the IDWR estimate of 341 acre feet per year. Again, the ESPAM model was not run for the Brockway Engineering review but the depletion values are linear with input volumes so the Brockway Engineering estimates are multiples of the IDWR values (.22/.30=.733).

At the request of A&B Irrigation District (Memo from D. Temple, Aug 10, 2009), IDWR (Alan Wylie) analyzed the benefits to Snake River Reaches from the implementation of 121 acres under the CREP program on the A&B District. These acres are separate from the CREP acres credited to IGWA. The analysis assumed that the 121 acres were located in Sec 25, 15, and 22 T8S R23E and Sec 5, 6, and 8 T8S R24E and the net reduction in aquifer depletion was 1.77 af/ac/year. This appears consistent with the assumption that a cover crop on the CREP acres would account for about 1/3 of an acre foot per year so that the full crop consumptive use could not be attributed to reduced depletion of the aquifer.

Wylie performed a simulation with the ESPAM model similar to the steady state analysis performed for the A&B conversion acres. Total reduced depletion input to the model was calculated as 121 acres x 1.77 af/ac/year or 214 af/year. The ESPAM steady state model shows a total of 214 af/year steady state output for all Snake River reaches. The ESPAM model calculated Devils Washbowl to Buhl reach steady state depletion reduction is 42 af/year. Brockway Engineering did not run the ESPAM model to confirm the IDWR output, but the results appear reasonable.

Combining the previous analysis of the conversion of 1378 acres of B lands which resulted in a beneficial impact on the Devils Washbowl to Buhl reach of 1055 af/ year with the 42 af/year attributable to the 121 A&B CREP acres results in a decrease in depletion of 1097 af/year.

Affidavit of Erika E. Malmen in Support of Unit A Association's Motion for Summary Judgment

Exhibit B

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
Sarah W. Higer, ISB #8012
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P.O. Box 485
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Telephone: (208) 733-0700
Facsimile: (208) 735-2444

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 WATER RIGHT NOS. 36-02356a,)	CM-MP-2009-002
36-07210 & 36-07247)	
)	
)	A&B IRRIGATION DISTRICT'S
IN THE MATTER OF THE MITIGATION)	RESPONSES TO UNIT A
PLAN FILED BY A&B IRRIGATION)	ASSOCIATION'S FIRST
DISTRICT)	DISCOVERY REQUESTS
)	
(Blue Lakes Delivery Call))	
<hr/>)	

COMES NOW, A&B IRRIGATION DISTRICT ("A&B"), by and through its counsel of record, pursuant to the Department's Rules of Procedure (IDAPA 37.01.01 *et seq.*), the Idaho Rules of Civil Procedure, and hereby responds to the Unit A Association's *First Set of Discovery* ("Discovery Requests") as follows:

GENERAL OBJECTIONS

1. A&B objects to the Discovery Requests and to the definitions and instructions to the extent they purport to require discovery responses beyond that required under the Department's Rules of Procedure and the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Department's Rules of Procedure and the Idaho Rules of Civil

in priority. A&B also diverts and uses storage water for certain lands within the District through water rights 1-2064 and 1-2068. To the extent storage water is delivered to the converted lands in a given irrigation season A&B admits that particular water is not available for use on other District lands within that irrigation season. However, A&B denies this action reduces the water available to the District for use on other District lands.

REQUEST FOR ADMISSION NO. 3: Please admit that the Mitigation Plan proposes a change in water source for the Unit B lands identified in Exhibit A to the Mitigation Plan.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Admit. Since 1993, 1995, and 1996 A&B has provided storage water instead of ground water to the Unit B lands identified on Exhibit A to the Mitigation Plan. A&B has also delivered drain water from adjacent District lands.

REQUEST FOR ADMISSION NO. 4: Please admit that you do not have the consent of all beneficial users of the surface water rights to the terms of the Mitigation Plan.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Objection. The terms “all beneficial users of the surface water rights” are vague and undefined. Notwithstanding this objection, A&B denies that a third party’s “consent” to the terms of the Mitigation Plan is required.

REQUEST FOR ADMISSION NO. 5: Please admit that water rights are appurtenant to the land upon which they are put to beneficial use.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Denied. The request is vague and calls for speculation.

REQUEST FOR ADMISSION NO. 6: Please admit that you do not have Unit A's consent to the terms of the Mitigation Plan.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Objection. The term “Unit A” is vague and undefined. While A&B is generally familiar with some landowners that have been affiliated with the so-called “Unit A Association”, A&B has no knowledge as to the membership of the “association” and therefore is unable to respond. Notwithstanding this

objection, A&B denies that a third party's consent to the terms of the Mitigation Plan is required.

REQUEST FOR ADMISSION NO. 7: Please admit that the Enlargement Rights are junior in priority to the surface water rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Admit.

REQUEST FOR ADMISSION NO. 8: Please admit that the Mitigation Plan proposes curtailment of water right 36-2080 as well as conversion of Unit B lands from groundwater to surface water irrigation.

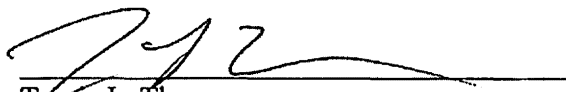
RESPONSE TO REQUEST FOR ADMISSION NO. 8: Admit.

REQUEST FOR ADMISSION NO. 9: Please admit that A&B Irrigation District does not hold legal title to the lands upon which the surface water rights are put to beneficial use.

REQUEST FOR ADMISSION NO. 9: Admit.

Dated this 1st day of February, 2010.

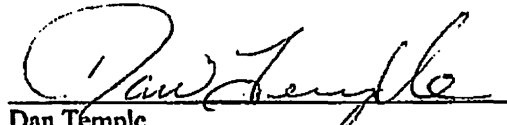
BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

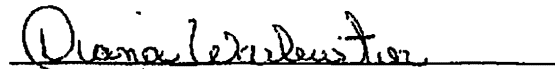
Attorneys for A&B Irrigation District

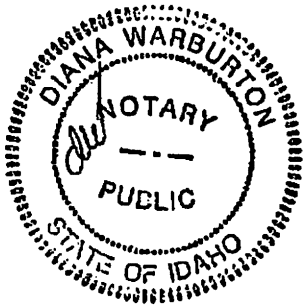
VERIFICATION

I, **Dan Temple**, general manager of the A&B, in the above title action, declare, under penalty of perjury under the laws of the United States, that I have read **A&B IRRIGATION DISTRICT'S RESPONSES TO UNIT A ASSOCIATION'S FIRST DISCOVERY REQUESTS** and the answers to the above requests are true, accurate, and complete to the best of my knowledge and belief.


Dan Temple

SUBSCRIBED & SWORN to before me this 1 day of February, 2010.


Notary Public in and for the State of Idaho
My Commission Expires: 3-26-14



Affidavit of Erika E. Malmen in Support of Unit A Association's Motion for Summary Judgment

Exhibit C

State of Idaho

License and Certificate of Water Right

Water License No. R-269Amount 1,800,000 acre feet

Water District No. _____

per annum March 30, 1921

Priority _____

THIS IS TO CERTIFY that UNITED STATES OF AMERICA, Acting through B. E. STOUTMYER, District Counsel U.S. Reclamation Service of Portland, Oregon, made application for a permit to appropriate the public waters of the State of Idaho, dated March 30, 1921, 19 19; that Permit No. R-269 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 1,800,000 ^{acre} ^{per annum} ~~second~~ feet, was issued thereunder on July 12, 1932, 19 19, showing that said works were completed on the 16th day of May, 19 31; and that on the 22nd day of April, 19 41,

UNITED STATES OF AMERICA

of Portland, State of Oregon, made proof to the satisfaction of the Commissioner of Reclamation of Idaho, of the right to use the waters of Snake River, a tributary of Columbia River, for the purpose of domestic and irrigation purposes, under Use Permit No. R-269 of the Commissioner of Reclamation and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 7 of Licenses, at page 4118, on the 9th day of July, 19 42;

The right hereby confirmed dates from March 30, 1921, 19 19;

The Point of Diversion is located

in the SW 1/4 1/4 SE 1/4 1/4, Sec. 30, Tp. 7 S, R. 31 E, B.M. Powder

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 1,800,000 cubic feet per second acre feet per annum, of which amount 1,700,000 acre feet represents the rated cubical contents of the reservoir and 100,000 acre feet is the maximum annual bank storage.

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
The place where said water is used is on the lands in the following irrigation districts and on the lands of the projects of the following irrigation companies: Aberdeen-Springfield Canal Co., American Falls Reservoir Dist., American Falls Reservoir Dist. No. 2, Blackfoot Irrig. Co., Burgess Canal & Irrig. Co., Butte & Market Lake Canal Co., Corbett Slough Ditch Co., Dilts Irrig. Co., Enterprise Canal Co., Enterprise Irrig. Dist., Harrison Canal & Irrig. Co., Hillsdale Irrig. Dist., Idaho Irrig. Dist., Lenroot Canal Co., Milner Low Lift Irrig. Dist., Minidoka Irrig. Dist., New Sweden Irrig. Dist., Peoples Canal & Irrig. Co., Poplar Irrig. Dist., Progressive Irrig. Dist., Reid Canal Co., Rudy Irrig. Canal Co., Chas. D. Smith (individual), Snake River Valley Irrig. Dist., Trege Ditch Co., Utah-Idaho Sugar Co., the lands in the upper Snake River Valley are supplied by means of exchange water. The names of the canals or ditches or other works by which said water is conducted to such place of use are: Aberdeen, Martin, North Side Project, Twin Falls Canal Co., Woodville, Gooding, Blackfoot, Burgess, Butte & Market Lake, Corbett, Dilts, Enterprise Canal Co., Enterprise Dist., Harrison, Idaho, Lenroot, Milner Low Lift, Minidoka, New Sweden, Peoples, Poplar Irrig. Dist., Progressive Irrig. Dist., Reid, Rudy, Smith, Snake River Valley, Trege, Utah-Idaho Sugar Co.					

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 9th day of July, 19 42

E.V. BEEG.

Commissioner of Reclamation

(SEAL)

01-2064

State of Idaho License and Certificate of Water Right

Water License No. 18721

Amount .06 cfs

Water District No.

Priority Jan. 16, 1939

THIS IS TO CERTIFY that JACK J. LUCAS
 of Coldsac, Idaho, made application for a permit to appropriate the
 public waters of the State of Idaho, dated Jan. 16, 1939, 19 ; that Permit No. 18721
 was issued under said application; that Certificate of Completion of works, with a carrying capacity of
 .06 second feet, was issued thereunder on August 5, 1940, 19, showing that said works
 were completed on the 17th day of July, 1940 ; and that on the 21st
 day of July, 1941,

JACK J. LUCAS

of Coldsac, State of Idaho, made proof to the satisfaction of the
 Commissioner of Reclamation of Idaho, of the right to use the waters of an unnamed
 spring tributary of , for the purpose of irrigation & domestic
 use, under Use Permit No. 18821 of the Commissioner of Reclamation
 and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is
 hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 7
 of Licenses, at page 4119, on the 27th day of March, 1942 ;

The right hereby confirmed dates from January 16, 1939, 19 ;

The Point of Diversion is located
 in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 26, Tp. 36 N, R. 3 W, B. M. Nez Perce County

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid,
 is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed .06
 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
36 N	3 W	26	SE $\frac{1}{4}$ SE $\frac{1}{4}$	3 1/2	3.0 Acres

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use
 herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho,
 this 27th day of March, 1942

E. V. HERB

Commissioner of Reclamation

(SEAL)

DUPLICATE OF ORIGINAL

State of Idaho
Department of Water Administration

LICENSE OF WATER RIGHT

License of Water Right No. R-670/01-2068 Priority July 28, 1939 Amount *1,400,000 AF

THIS IS TO CERTIFY, that the U.S. BUREAU OF RECLAMATION
of Boise, Idaho, has complied with the terms and conditions of Permit
No. R-670/01-2068 issued pursuant to Application for Permit dated July 28, 1939
and has submitted proof to the Department of Water Administration on November 16, 1965
that ~~it~~ ^{it} has applied water to a beneficial use; an examination by the Department indicates that the
works have a capacity of 1,400,000 AF, and that a right to the use of water from
the Snake River tributary of
the Columbia River is hereby confirmed in the following amounts:

Amount 1,200,000 af for ** Storage for from Jan. 1 to Dec. 31 (both dates inclusive)

Amount for Irrigation from to (both dates inclusive)

Amount 1,200,000 af for Power from Jan. 1 to Dec. 31 (both dates inclusive)

Subject, however, to the condition that no more than *1,400,000 AF of water be stored at
any one time, said waters to be diverted within the

NE 1/4 of Section 17, Twp. 1 South, Rge. 45 East, B.M.

in the county of Bonneville and that the amount of water so stored and to which such
right is entitled and confirmed is for the purposes aforesaid and is limited to the amount which can
actually be beneficially used and shall not exceed 1,200,000 acre feet per year ~~or~~

~~or~~ *1,400,000 AF includes 1,200,000 AF of active storage and 200,000 AF of inactive or dead storage.
Description and location of place of use: storage.

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS	
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4		
			(Palisades Reservoir)																	
			1,038,098 acres within the service area of the																	
			organizations listed in Exhibit A.																	

Total number of acres irrigated

** The use of water under this license, when combined with water diverted under other
water rights held by the organizations listed in Exhibit A, shall not exceed that required
for the consumptive requirements of the crops irrigated plus necessary and reasonable
conveyance losses.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands
or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 19th day of

March, 19 73.


Director

010-2068

EXHIBIT A

Attachment to License of Water Right No. R-670/01-2068

Lands within the project boundary are served by and/or are within the boundaries of the following organizations:

Aberdeen Springfield Canal Co.
Blackfoot Irrigation Co.
Burgess Canal & Irrigating Co.
Butler Island Canal Co.
Butte & Market Lake Canal Co.
Clark & Edwards Canal Co.
Corbett Slough Ditch Co.
Craig, Mattson Canal Co.
Danskin Ditch Co.
Dilts Irrigation Co.
Enterprise Canal Co., Ltd.
Falls Irrigation District
Farmers Friend Irrigation Co., Ltd.
Harrison Canal & Irrigation Co.
Idaho Irrigation District
Island Irrigation Co.
Labelle Irrigating Co.
Lenroot Canal Co.
Liberty Park Irrigation Co.
Long Island Irrigation Co.
Lowder Slough Canal Co., Ltd.
Martin Canal Co.
Michaud Division, Fort Hall Indian Reservation
New Lava Side Ditch Co.
New Sweden Irrigation District
North Rigby Irrigation & Canal Co.
Owners Mutual Irrigation Co.
Parks & Lewisville Irrigation Co.
Parsons Ditch Co.
Peoples Canal & Irrigation Co.
Poplar Irrigation District
Progressive Irrigation District
Reid Canal Co.
Rigby Canal & Irrigating Co.
Riverside Ditch Co.
Rudy Irrigation Canal Co.
Shattuck Irrigation Co.
Snake River Valley Irrigation District
Sunnydell Irrigation District
Texas Slough Irrigation Canal Co.
Trego Ditch Co.
Utah-Idaho Sugar Co.
Watson Slough Ditch & Irrigation Co., Ltd.
Wearyrick Ditch Co.
West Labelle Irrigation Co.
West Side Mutual Canal Co.
Woodville Canal Co.
✓ Palisades Water Users, Inc.
Burley Irrigation District
Milner Low Lift Irrigation District
Minidoka Irrigation District
North Side Canal Co., Ltd.
North Side Pumping Division
Minidoka Project (Unit A)
City of Pocatello
Fremont-Madison Irrigation District
American Falls Reservoir District #2

01-2068

Affidavit of Erika E. Malmen in Support of Unit A Association's Motion for Summary Judgment

Exhibit D

LING, ROBINSON & WALKER
ATTORNEYS AT LAW
RUPERT, IDAHO 83350-0396

RECEIVED
MAY 16 2005
Department of Water Resources

Roger D. Ling, Esq.
LING, ROBINSON & WALKER
Attorneys at Law
615 H Street
P. O. Box 396
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ISB No. 1018

Attorneys for Applicant,
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.)

**REQUEST FOR APPROVAL
OF MITIGATION PLAN OF
A & B IRRIGATION DISTRICT**

COMES NOW A & B Irrigation District, an irrigation district duly formed under the laws of the State of Idaho, of P. O. Box 675, 414 11th Street, Rupert, Idaho 83350, by and through its attorney of record, and submits the following proposed Mitigation Plan, to-wit:

1. That pursuant to a letter dated April 22, 2005, addressed to the United States of America, acting through the USDI Bureau of Land Management, from Cindy Yenter, Watermaster of Water District 130, which letter ultimately was delivered to the Bureau of

REQUEST FOR APPROVAL OF MITIGATION PLAN OF A & B IRRIGATION DISTRICT

1
2
3 Reclamation and A & B Irrigation District on April 29, 2005, A & B Irrigation District, the
4 equitable owner of the following water rights was advised that it would be required to provide
5 replacement water as mitigation for depletions to flows of the Snake River caused by its ground
6 water pumping pursuant to the Director's Order issued April 19, 2005, in the above-entitled
7 matter. The water rights listed in said letter are:

8 36-15127B for the irrigation of 1,751.5 acres

9 36-15193B for the irrigation of 18.9 acres

10 36-15194B for the irrigation of 152.4 acres

11 36-15195B for the irrigation of 135.6 acres

12 36-15196B for the irrigation of 4.7 acres

13 Total Acres: 2,063.1

14
15 2. Said water rights have priorities of April 1, 1984, April 1, 1965, April 1,
16 1968, April 1, 1978, and April 1, 1981, respectively, subject to an appeal of that priority date and
17 the date of subordination now on file with the Idaho Supreme Court.

18
19 3. The 2,063.1 acres covered by the above water rights are entitled to divert
20 four (4) acre-feet per acre each year, or a total of 8,252.4 acre-feet, and the annual consumptive
21 use of water in the irrigation of said 2,063.1 acres is 1.6 acre-feet per acre.

22
23 4. A & B Irrigation District presently holds an equitable interest in Water
24 Right No. 01-02064 for the storage of 47,593 acre-feet of water in American Falls Reservoir
25 when the active capacity of American Falls Reservoir is 1.7 million acre-feet, and an equitable
26 interest in Water Right No. 01-02068 for the storage of 90,800 acre-feet in Palisades Reservoir,

1
2
3 which reservoirs are owned and operated by the United States of America, Department of
4 Interior, Bureau of Reclamation.

5 5. A & B Irrigation District is the equitable owner of Water Right No. 36-
6 02080, which entitles A & B Irrigation District to divert 1100 cfs from the Eastern Snake Plain
7 Aquifer for the irrigation of 66,683.2 acres, which water right is held in the name of the United
8 States of America, Department of Interior, Bureau of Reclamation.

9
10 6. The above water rights are used for the irrigation of lands within A & B
11 Irrigation District pursuant to a contract with the United States of America, Department of
12 Interior, Bureau of Reclamation whereby A & B Irrigation District operates and maintains said
13 project, and is in the process of paying for its landowners the construction costs of the project,
14 including its pro rata share of storage facility construction and all of the operation and
15 maintenance costs of that portion of the project transferred to A & B Irrigation District.

16
17 7. A & B Irrigation District has converted 1,377.8 acres irrigated under the
18 above ground water rights to irrigation from surface water using storage water under the storage
19 rights above referred to, which conversion fully mitigates any alleged injury to senior surface
20 water rights or senior ground water rights, as such conversion has reduced the consumptive use
21 of ground water on said acres at the rate of 1.6 acre-feet per acre, for a total savings in
22 consumptive use of ground water in the amount of 2,204.48 acre-feet.

23
24 8. The average annual surface water diversion use on the above 1,377.8 acres
25 within A & B Irrigation District that have been converted from ground water to surface water is
26 3.7 acre-feet per acre per annum. This conversion therefore provides a minimum of 2.1 acre-feet
27

1
2
3 Curtailment of the irrigation of these lands has occurred for the first time in 2005,
4 or was a continuation of a curtailment that was accomplished and part of the A & B Irrigation
5 District mitigation plan submitted in response to the Rangen Curtailment Order in 2004, and such
6 curtailment is further mitigation in mitigation plans, past or future.

7
8 13. The above mitigation plan submitted by A & B Irrigation District, who is
9 the holder of the junior-priority ground water rights above described, identifies actions and
10 measures to prevent holders of senior-priority surface water rights or ground water rights from
11 suffering material injury, regardless of the definition, caused by the diversion and use of water by
12 A & B Irrigation District of ground water within an area having a common ground water supply.

13 WHEREFORE, A & B Irrigation District requests that the Director fully consider
14 the above mitigation plan and that the mitigation plan be approved in regard to the delivery call
15 above referred to and made in this proceedings by surface water users. It is further requested that
16 in the event more specific information is necessary or desired, A & B Irrigation District requests
17 the opportunity to provide such additional information, including identification of specific
18 location of acres being irrigated with recaptured irrigation waste and drain water and the specific
19 location of the lands formerly irrigated with ground water which are now being provided an
20 alternative source of water from surface water sources.
21

22 Respectfully submitted this 12th day of May, 2005.

23
24 LING, ROBINSON & WALKER

25
26 By: 

Roger D. Ling

Attorneys for A & B Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of May, 2005, served copies of the foregoing *Request for Approval of Mitigation Plan of A & B Irrigation District* upon the following parties by the method indicated below:

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Judy Barnes

Affidavit of Erika E. Malmen in Support of Unit A Association's Motion for Summary Judgment

Exhibit E

RECEIVED

FEB 01 2010

DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE NORTH
SNAKE AND MAGIC VALLEY GROUND
WATER DISTRICTS' 2009 JOINT
MITIGATION PLAN FOR 2009
(Blue Lakes)

Docket No. CM-MP-2009-002

IN THE MATTER OF A&B IRRIGATION
DISTRICT'S RULE 43 MITIGATION PLAN

(Water Right Nos. 36-02356A, 36-07210, and
36-07427)

DIRECT TESTIMONY OF
GARY OTTMAN

SUBMITTED ON BEHALF OF:

UNIT A ASSOCIATION

February 1, 2010

DIRECT TESTIMONY OF GARY OTTMAN

Q. CAN YOU PLEASE STATE YOUR FULL NAME AND ADDRESS?

A. My name is Gary Ottman and I live at 2860 East 1100 South, Hazelton, Idaho 83335.

My work address is the same.

Q. WILL YOU PLEASE DESCRIBE YOUR BACKGROUND?

A. I grew up on the land that I am currently farming, which is located within Unit A of the A&B Irrigation District. I am a second-generation farmer and have farmed for 34 years. I graduated from Minico High School in Rupert, Idaho, in 1977.

Q. HOW ARE YOU CURRENTLY EMPLOYED?

A. Self-employed.

Q. WHO ARE YOU TESTIFYING FOR IN THIS MATTER?

A. Unit A Association ("Association"). I am the President of the Association and I am authorized to testify on its behalf. I have been the President since August 23, 2005.

Q. WHAT, GENERALLY, ARE YOUR DUTIES AS PRESIDENT OF THE ASSOCIATION?

A. Some of my duties include maintaining the records of Unit A Association and carrying out the decisions of the Association's Board of Directors.

Q. WHEN AND WHY WAS UNIT A ASSOCIATION FORMED?

A. Unit A Association was formed on July 1, 2005 and the first official Association meeting was held August 23, 2005. The Association was formed for a variety of reasons, all of which are related to what some members of Unit A felt was inequitable treatment of Unit A landowners by A&B Irrigation District ("A&B") as well as the lack of transparency from the A&B Board of Directors ("A&B Board"). A true and correct copy of the Unit A

1 Association 2005 Resolutions providing a more detailed description of circumstances
2 surrounding the Association's formation can be found in Exhibit A, attached hereto and
3 incorporated herein by this reference. The Unit A Association Resolutions is a document
4 maintained in the ordinary course of business and in the business records of Unit A
5 Association.

6 **Q. WHO ARE THE MEMBERS OF THE ASSOCIATION?**

7 **A.** The Association is comprised mostly of smaller farming operations within Unit A and
8 approximately 30% of the landowners physically situated within Unit A are also
9 Association members.

10 **Q. IS UNIT A PART OF THE A&B IRRIGATION DISTRICT?**

11 **A.** Generally speaking, all landowners physically situated within Unit A are members of
12 A&B. The Association itself is not a member of A&B – the Association was formed in
13 an effort to help protect the interests of Unit A landowners from any adverse actions of
14 the A&B Board. When A&B Irrigation District was formed, it was decided that Board
15 membership would be based on the amount of acres within the district, divided up into
16 five (5) geographic areas. There are decidedly more Unit B acres within A&B than there
17 are Unit A acres– the ratio is approximately 4:1.

18 **Q. CAN YOU BRIEFLY DESCRIBE THE HISTORY OF A&B IRRIGATION**
19 **DISTRICT, INCLUDING THE RELATIONSHIP BETWEEN A&B IRRIGATION**
20 **DISTRICT, UNIT A AND UNIT B?**

21 **A.** A&B Irrigation District is an irrigation district that was formed by the landowners of the
22 North Side Pumping Division of the Minidoka Project. When the lands included within
23 the A&B Irrigation District were settled, the settlers had a choice of whether they wanted

1 to farm acres in Unit A or in Unit B. In accordance with the U.S. Bureau of Reclamation
2 February 1955 Definite Plan Report for the North Side Pumping Division of the
3 Minidoka Project, A&B is divided into two (2) units: Unit A which provides surface
4 water for irrigation to Unit A lands and Unit B which provides groundwater for irrigation
5 to Unit B lands. A true and correct copy of the February 1995 Definite Plan Report for
6 the North Side Pumping Division of the Minidoka Project as I have received it is attached
7 hereto and incorporated herein as Exhibit B. Accordingly, the source of irrigation water
8 for Unit A is separate from the source of irrigation water for Unit B. This concept of
9 separate sources of water for Unit A and Unit B is further supported by a copy of the
10 following documents with which I am familiar: the original patent issued to my father,
11 John M. Ottman, a true and correct copy of which is attached hereto and incorporated
12 herein as Exhibit C; a copy of a September 18, 1956 repayment contract between the U.S.
13 Bureau of Reclamation and the North Side Pumping Division, a true and correct copy of
14 which is attached hereto and incorporated herein as Exhibit D; and a copy of a November
15 20, 1961 repayment contract between the U.S. Bureau of Reclamation and the North Side
16 Pumping Division, a true and correct copy of which is attached hereto and incorporated
17 herein as Exhibit E.

18 **Q. DID YOU OR UNIT A ASSOCIATION PARTICIPATE IN THE PREPARATION**
19 **OF THE A&B RULE 43 MITIGATION PLAN FILED ON AUGUST 18, 2009?**

20 **A.** No.

21 **Q. DID YOU OR UNIT A ASSOCIATION CONSENT TO THE TERMS OF THE**
22 **A&B MITIGATION PLAN FILED ON AUGUST 18, 2009?**

23 **A.** No.

1 Q. TO YOUR KNOWLEDGE, HAVE YOU OR OTHER ASSOCIATION MEMBERS
2 EVER CONSENTED TO ANY UNIT B ACRES BEING CONVERTED FROM A
3 GROUNDWATER TO A SURFACE WATER SOURCE?

4 A. No.

5 Q. WHICH UNIT A SURFACE WATER RIGHTS DOES THE A&B MITIGATION
6 PLAN FILED ON AUGUST 18, 2009 PROPOSE TO USE TO IRRIGATE UNIT B
7 LANDS?

8 A. According to my review of the Mitigation Plan, a portion of Water Right Nos. 1-2068 &
9 1-2064, as recommended in the Snake River Basin Adjudication.

10 Q. WHEN DID THE ASSOCIATION FILE IT'S PROTEST TO THE A&B RULE 43
11 MITIGATION PLAN FILED BY A&B ON AUGUST 18, 2009?

12 A. On or about September 25, 2009.

13 Q. WHY DID THE ASSOCIATION PROTEST THE A&B RULE 43 MITIGATION
14 PLAN FILED ON AUGUST 18, 2009?

15 A. The primary bases for the Association's protest are that the Mitigation Plan proposes to
16 use water appurtenant to Unit A lands for irrigation of Unit B lands, and perhaps other
17 lands, without Unit A landowners' consent, and because implementation of the Mitigation
18 Plan will injure Unit A landowner Association members by reducing the quantity of
19 water that will be available for irrigation of Unit A lands as a result.

20 Q. WHAT DO YOU BASE YOUR TESTIMONY ON?

21 A. When less water is available for irrigation, crop yields and associated revenues and
22 profits decrease. For example, in 2004 and 2005, Unit A received significantly less water
23 than usual, primarily as a result of surface water lease/exchange agreements made by the

1 A&B Board in preceding years. In short water years, Unit A landowners must generally
2 plant less water-consumptive and less valuable crops, such as peas and barley, instead of
3 more valuable crops such as potatoes, beans or sugar beets.

Affidavit of Erika E. Malmen in Support of Unit A Association's Motion for Summary Judgment

Exhibit F

FEBRUARY 16, 2010

REPLY TESTIMONY OF DAN TEMPLE

Q. CAN YOU PLEASE STATE YOUR FULL NAME, ADDRESS, AND POSITION?

A. My name is Dan Temple and I live at 175 W. 750 Lane N., Rupert Idaho 83350. My work address is 414 11th St., Rupert, Idaho 83350. I am the manager for the A&B Irrigation District.

Q. WHO ARE YOU TESTIFYING FOR IN THIS MATTER?

A. The A&B Irrigation District. I provided direct testimony in support of A&B's mitigation plan in this matter on January 11, 2010.

Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?

A. I am offering rebuttal testimony to points raised by Mr. Gary Ottman in his direct testimony submitted on behalf of the Unit A Association on February 1, 2010.

Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY OF GARY OTTMAN AND THE ATTACHED EXHIBITS?

A. Yes I have.

Q. CAN YOU DESCRIBE THE TERM "UNIT A" AND WHAT IT MEANS FOR PURPOSES OF OPERATING THE DISTRICT AND DELIVERING WATER?

A. Yes. The District was constructed by the United States Bureau of Reclamation with two divisions, Unit A and Unit B. In 1966 the Bureau turned over operation and maintenance of the District to the water users to operate under the 1962 repayment contract with the District. Unit A's water supply consists of natural flow and storage water diverted from the Snake River. Unit B's water supply is ground water from the Eastern Snake Plain Aquifer ("ESPA").

1 A. There have only been 2 years in the District's 52 years of operation, 2004 and 2005, that
2 landowners that receive surface water were placed on a restricted per acre water
3 allocation for the year. In 2004 that was a 2.6 acre-feet per acre allocation and in 2005
4 that was a 3 acre-feet allocation. These reduced allocations were a combination of
5 drought conditions with no or very little reservoir fill in junior Palisades space (1939) in
6 2002, 2003, and 2004 (**Exhibit B** – watermaster report excerpts), and Water District 01's
7 and IDWR's decisions related to the treatment of prior exchanges of storage water that
8 the District entered into with other irrigation districts and canal companies. Although
9 A&B believed the water exchanged would return to the respective storage account by
10 reservoir, the Watermaster did not treat the exchange that way, and the exchange water
11 was considered the first water used so A&B did not receive the water back into the
12 reservoir storage space that was intended by the District when the exchanges were
13 executed and approved. A&B challenged the Watermaster's decision but it was upheld
14 by IDWR. The reduced allocations in 2004 and 2005 did not occur due to Unit B's
15 converted lands receiving a share of the available surface water. If you take the measured
16 surface water portion of deliveries to the converted lands and had delivered that water
17 only to the District Unit A lands, the individual allocations would have only increased 0.2
18 acre-feet (about 7%) in 2004 and 0.14 acre-feet (about 5%) in 2005.

19 **Q. CAN LANDOWNERS REQUEST MORE THAN 3 ACRE-FEET PER ACRE?**

20 A. Yes they can. A landowner can pay for "excess" water with an increasing charge for
21 each acre-foot over 3 that is used within an irrigation season.

22 **Q. HAVE ANY UNIT A ASSOCIATION LANDOWNERS USED EXCESS WATER**
23 **TO YOUR KNOWLEDGE?**