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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
REPLY TO A&B IRRIGATION
DISTRICT'S RESPONSE TO 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 correspondence dated May 19, 2004 from Dan Temple, Manager of A&B Irrigation District, addressed to "Water user."

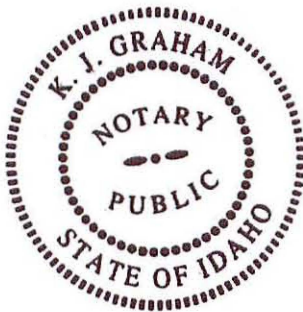
3. Attached hereto as **Exhibit B** is a true and correct copy of A&B Irrigation District News Letter dated Spring, 2005.


4. Attached hereto as **Exhibit C** is a true and correct copy of A&B Irrigation District News Letter dated Spring, 2007.

DATED: March 12, 2010


Erika E. Malmen

SUBSCRIBED AND SWORN TO before me this 12th day of March, 2010.




Notary Public for Idaho
Residing in Meridian
My Commission Expires: 02/06/13

CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 12, 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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<input checked="" type="checkbox"/>

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

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

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

Travis L. Thompson
Paul L. Arrington
Sarah W. Higer
Barker Rosholt & Simpson LLP
113 Main Avenue West, Suite 303
PO Box 485
Twin Falls, Idaho 83303-0485

Hand Delivery
U.S. Mail
Facsimile: (208) 735-2444
Overnight Mail
Email: tlt@idahowaters.com
pla@idahowaters.com
swh@idahowaters.com

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

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

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

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

Hand Delivery

U.S. Mail

Facsimile: (303) 825-5632

Overnight Mail

Email: sarahk@white-jankowski.com

X
X

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

X
X

William A. Parsons

Parsons, Smith & Stone, LLP

137 West 13th Street

PO Box 910

Burley, Idaho 83318

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U.S. Mail

Facsimile: (208) 878-0146

Overnight Mail

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X
X



Robert A. Maynard

Erika E. Malmen

Cynthia L. Yee-Wallace

Exhibit A

LARGEST HOMESTEAD PUMPING PROJECT IN U.S.A.
70,795.2 IRRIGABLE ACRES



A & B Irrigation District

P.O. BOX 675 • ELEVENTH & E. STREETS • RUPERT, IDAHO 83350
DIAL: (208) 436-3152 FAX: (208) 436-3151

May 19, 2004

Dear Water user:

Southern Idaho, along with most of the West, is in its 5th consecutive year of drought. These drought conditions continue to negatively impact the District's ability to deliver a full water supply to both the Unit A and the Unit B Divisions of the Project.

For Unit A, the District holds storage space rights in both American Falls and Palisades reservoirs totaling 136,800 acre feet. But until the allocation of this year's snowmelt is determined, the District will not know our actual percentage of reservoir refill. At the end of the 2003 season we only had a total of 9,400 acre feet of storage carry over in our reservoir space. As of May 19, 2004 our American Falls right is only expected to refill 80% making our total current estimates of water available for Unit A use this season 78% of our annual average usage.

To help obtain a full water supply for this season your Board of Directors have applied to the Water District 01 rental pool requesting to purchase water. The District also has commitments from two other irrigation entities to purchase water from them if they have it available after their allocation is made.

Unfortunately, the District cannot inform you of your total water supply available for this season until the reservoir systems allocation is made.

Unit B is unique in its own way that its water is also held in a reservoir in the Snake Plain Aquifer, whose supply volume cannot be defined. What we do know is that the last 6 years the water table has been declining approximately 2 ½ feet per year on an average and at the end of the 2003 season the average low pumping depth was 2 feet lower than it ever has been since A&B's development. As I'm sure you are aware as the water table continues to drop, the water quantity that each pump can produce declines, thereby reducing the per acre criteria the District can deliver.

The District last winter drilled deeper as many wells as time permitted and worked on other pumps in an effort to increase the deliverable criteria to the farm units.

Hopefully, this limited amount of early information will help you understand and appreciate the same worries that we have about this year's water supply for both Unit A & B. Because of the potential delivery shortages we would like to encourage you to make the best use of the supply we do have and conserve it whenever possible. As soon as we receive confirmed storage numbers for Unit A or notice any Unit B pump discharge declines that alarms us, we will notify you with this information.

If you have any questions, please feel free to give me a call at 208 436-3152.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dan Temple".

Dan Temple
Manager

REDACTED

UNITA 001

Exhibit B



A&B Irrigation District

News Letter Spring, 2005

Office - 436-3152

East Yard - 532-4329

West Yard - 438-2462

Water Delivery Time Changes

Over the last ten years, the District has been able to make substantial changes to several of the deepwell pumping systems. Because of these changes, and efforts to reduce labor costs, the District has been able to reorganize the individual Ditchriders and reduce the total number of Ditchriders from 10 to 9, beginning with the 2005 season. Ride 105 was eliminated.

Ride 105's pumps were dispersed among the remaining Ditchriders. It was necessary to move several other delivery systems around between the remaining rides, in order to make a logical Ride route, and to balance the Delivery Systems among the Ditchriders. If you will refer to the enclosed Ditchrider arrival time schedule, you will be able to identify your deepwell delivery system(s) and the new arrival times. This will not affect your Unit A arrival times.

2005 Season Turn-On Date

The Board of Directors, in efforts to conserve water in this time of drought, have set the 2005 irrigation season turn-on date for the 20th of April.

■ Unit A

Because of the almost certain possibility of a reduced delivery supply and delivery system losses, the Unit A system will not be filled with water until the District receives total delivery orders of at least 2100 inches of water. The District must receive the 2100 inches of water requests by 3:30 P.M. Friday, 4/15/2005, to begin deliveries on Wed., 4/20/2005. Beginning Monday, 4/18/2005, the District will have to have 72 hours notice prior to actual delivery date being requested to begin the season.

■ Unit B

As in the past, the District must receive your water request 24 hours in advance of any actual water deliveries and you are still required to

order a pump minimum of one third of the pump's discharge before the pump will be started.

2005 Water Supply

■ Unit A

As you're aware, the actual 2005 allocation (amount of water available) will not be made until probably sometime in June.

The District has been and will continue to review all of the forecasted run-off and snow pack information available. At this point in time, there are numerous factors that make it impossible to provide you with an actual water supply forecast for this season, such as:

1. The timing of the snow pack run-off.
2. Will we receive any further precipitation.
3. When will irrigation demands exceed run-off, eliminating any further reservoir storage.
4. What are the temperatures going to be for the next month or so.

All that the District is able to do is to review this information and look at historical patterns and trends to make a best guess or estimate as to your actual 2005 water supply, not knowing how all of the variables will affect the actual supply.

■ Palisades Reservoir

At this time, it appears that the District will not accrue any storage in Palisades Reservoir.

● American Falls Reservoir

All factors and information currently available indicate that American Falls could fill somewhere between 80% and 100% depending on all the above mentioned variables that take place over the next couple of months.

A 80% to 100% American Falls supply would only yield somewhere between 1.5 acre feet to 2.2 acre feet per irrigable acre to the original District Irrigable acres.

- **Exchange Water Dispute**

There is no way the District can predict the outcome of the Formal Hearing that was held in February, or if there would be appeals of the decision after it has been made. However, the probability of receiving additional water this year as a result of a favorable ruling is uncertain, due to the possibility of an appeal.

- **Unit B**

Historical trends indicate the aquifer probably will still be in a decline this year. As this decline continues, the District's deepwell pumping capabilities also continue to decline. Work was performed on approximately 15 deepwell systems this past winter to increase pumping criteria, but making much headway is difficult as long as the aquifer continues to decline.

Power Scheduling – Unit A & Unit B

Because of the scheduling requirements and penalties:

- All water orders to come on, off, or to make volume flow changes will have to be given to the Ditch Riders 24 hours in advance.
- Unit A and Unit B water orders will have to be given to the Rider no later than 3:30 P.M. for any changes for the following day.

Phone call orders allow for the possibility of mistakes. Please assist us and use the request card and make sure the card is up before the Rider's scheduled arrival time at your delivery system.

Property Sales or Exchanges:

Please advise the District as soon as possible of any real property changes within the District boundaries. Before the District can make any ownership changes on our records we need a copy of the recorded Warranty Deed and a copy of the survey. Please remind the Title Company or attorney handling the transaction to send the District a copy.

Certificate of Landholding Forms:

The Federal Reclamation Reform Act (RRA) requires every landholder with landholdings above 240 acres to annually file a Certificate of Landholding form. No irrigation water can be provided by the A&B Irrigation District to landowner or lessee in 2005 until a "Certificate of Landholdings" form is filed in the A&B Irrigation District office, even if Construction, Operation & Maintenance, and Excess Water charges are paid.

Please call the A&B Irrigation District office to confirm your filing status. We will not clear you for water until we hear from you.

Remember that we will need to have received the correctly completed form(s), both owner's and lessee's (if any), 24 hours prior to any requested water delivery date.

Change in Ownership or Leasing:

If a landholder's ownership or leasing arrangements change in any way during the irrigation season, you must notify the District of that change immediately. The Bureau of Reclamation will assess a fine of \$290 for not filing a corrected or new RRA from the day of the change. Changes can consist of new entries created such as corporations, partnerships, trusts, estates, etc. or the acquisition of new lands or the sale of any existing lands.

Any RRA forms not filed correctly will be fined \$290 by the Bureau of Reclamation per irrigation season until the correct form is filed and will be ineligible to receive irrigation water.

Reminder:

With spring approaching, we are beginning another year trying to get the delivery and drainage systems ready to handle water. Please help by removing any gated pipe, handlines, etc. from District right of ways to help assist the District burning crews. A&B will not be responsible for any damage done to private equipment left within the District's right of way. Thank you for your cooperation.

Exhibit C



A&B Irrigation District

News Letter Spring, 2007

Office - 436-3152

East Yard - 532-4329

West Yard - 438-2462

2007 Water Supply

■ Unit B

Average declines of two feet in aquifer levels annually are still creating challenges for the District by reducing our diversion rate capabilities as the aquifer declines. Work was performed on approximately 15 deep well systems again this winter to increase pumping criteria, but making much headway is difficult as long as the aquifer continues to decline.

■ Unit A

Annual diversion for Unit A lands range from 49,000 to 64,000 acre feet with an average annual diversion of 56,000 acre feet. Depending on the amount of natural flow right the District may receive at the beginning of any irrigation season, the majority if not all of the District's American Falls 46,826 acre feet of storage right is used each year with the remainder of the annual diversion coming from the Palisades right of 90,800 acre feet.

Below normal snow pack this year in the Upper Snake will not affect the District's 2007 irrigation season supply because of the approximate 88,000 acre feet of carryover from 2006 in our Palisades space plus the anticipated new fill of the 46,826 acre feet in American Falls for a total of 134,826 acre feet for 2007.

Power Scheduling -- Unit A & Unit B

Because of the scheduling requirements and penalties:

- All water orders to come on, off, or to make volume flow changes will have to be given to the Ditch Riders 24 hours in advance.

- Unit A and Unit B water orders will have to be given to the Rider no later than 3:30 P.M. for any changes for the following day.

Phone call orders allow for the possibility of mistakes. Please assist us and use the request card and make sure the card is up before the Rider's scheduled arrival time at your delivery system.

■ Email Water Orders:

After a successful pilot program with a few water users last year your District Board of Directors has decided to extend the email water order option throughout the district, but will also still utilize the water request card system.

If you select to use the email for your water orders the following criteria will need to be met:

- All email water orders must reach the office by 1:00 PM the day prior to your water delivery. The district will not be responsible if your email gets held up because of email server(s) delays and/or other problems. Only orders received in the district office by 1:00 PM will be accepted.
- The District will accept water orders, changes or turnoffs only three days in advance.
- A standard form using District provided guidelines is required to be used. All required information must be completed. Any incomplete information may result in your order being delayed one day.

The email will replace water request cards; therefore you will not need to leave a card at the pump.