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June 14, 2016

VIA EMAIL & U.S. MAIL

Director Gary Spackman
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83702-7374

RECEIVED

JUN 14 2016

**DEPARTMENT OF
WATER RESOURCES**

**Re: A&B Irrigation District Mitigation / SWC Delivery Call / CM-DC-2010-001
& CM-MP-2015-003 / Request for Removal from Curtailment List**

Dear Director Spackman:

I am writing on behalf of our client the A&B Irrigation District ("A&B" or "District"). A&B filed petitions requesting hearing in the above-referenced matters and the parties recently held an informational meeting with IDWR staff concerning the methods used to identify A&B's proportionate share of the predicted in-season demand shortfall set forth in the April As Applied Order (April 19, 2016).

Although A&B has an approved mitigation plan in response to the SWC delivery call, it has elected to not deliver groundwater pursuant to its enlargement water rights that are subject to the April As Applied Order and the curtailment order. Pursuant to its decreed water rights issued by the SRBA Court, A&B is authorized to irrigate the following acres within the District:

<u>Water Right No.</u>	<u>Priority Date</u>	<u>Acres</u>
36-2080	9/9/1948	62,604.3
36-15127A	4/1/1962	1,886.4
36-15192	4/1/1962	36.3
36-15193A	4/1/1962	12.5
36-15194A	4/1/1962	13.7
36-15195A	4/1/1962	52.5
36-15196A	4/1/1962	17.4

	Total	64,623.1

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The above listed water rights are authorized to be used anywhere within the District's place of use and can be pumped from any of its 184 points of diversion (wells). In 2016 the District is delivering groundwater to 62,939.9 acres. The District has sufficient senior water rights (pre-February 8, 1989) to cover the acres that are receiving groundwater this year. As such, A&B is not diverting or delivering any groundwater pursuant to its enlargement water rights (36-15127B et al.) that are subject to the curtailment order. A&B has the legal right and discretion to distribute groundwater pursuant to its senior water rights in this manner. *See A&B Irr. Dist. v. IDWR*, 153 Idaho 500, 512-14 (2012); *Memorandum Decision and Order on Petition for Judicial Review* at 38-41 (Minidoka County Dist. Ct., Fifth Jud. Dist., CV-2009-647, May 4, 2010) ("A&B is authorized under the right to divert up to its decreed amount from any combination of its points of diversion at its discretion").

Groundwater to the enlargement water right acres (2,063.1 acres) is shut off and A&B is delivering surface water through its river pumping plants and surface water infrastructure. A&B has both natural flow and storage water rights to deliver to these acres that are included within the surface water rights' decreed places of use. Accordingly, no transfer or water right change authorization is needed from IDWR.

With the above clarification of its water deliveries this year, A&B does not have a mitigation obligation subject to the April As Applied Order. A&B requests the Director to remove the District's enlargement water rights from the curtailment order list and rescind any mitigation obligation attributed to the District. Once A&B has confirmation of the Director responding to this request the District can then proceed to withdraw the petitions requesting hearings.

Please advise if you have any questions.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

cc: Dan Temple
Randy Budge / T.J. Budge
Sarah Klahn / Mitra Pemberton
Kent Fletcher