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DEPARTMENT OF  
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

A&B IRRIGATION DISTRICT, )  
)  
Petitioner, )  
)  
vs. )  
)  
DAVID R. TUTHILL, JR., in his official )  
capacity as director of the Idaho Department of )  
Water Resources, and **THE IDAHO** )  
**DEPARTMENT OF WATER RESOURCES,** )  
)  
Respondents. )

CASE NO. 07-665

**PEREMPTORY  
WRIT OF MANDATE**

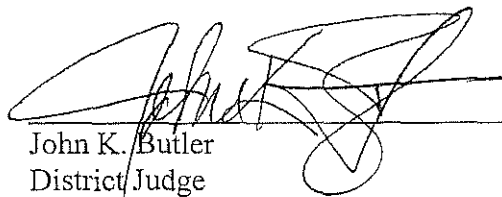
TO: David R. Tuthill, Jr., in his official capacity as Director of the Idaho Department of Water Resources, and The Idaho Department of Water Resources, GREETING

In the above-entitled matter, Petitioner herein having filed its duly verified Petition for Writ of Mandate supported by the Affidavit of Dan Temple, with attachments, and an Alternative Writ of Mandate and Order to Show Cause having issued herein, and, upon the hearing of said Order to Show Cause so issued in connection with said Alternative Writ of Mandate in the above-entitled matter, an Amended Alternative Writ of Mandate having been issued, and the respondents David R. Tuthill, Jr., Director of the Idaho Department of Water Resources, and The Idaho Department of Water Resources having filed their Motion to Dismiss Petitioner's Alternative Writ of Mandate and the Verified Petition for Peremptory Writ of Mandate, supported by three affidavits of respondent David R. Tuthill, Jr. and the affidavit of Alan Wylie, and the affidavits of Dan Temple and Charles E. Brockway, P.E., Ph.D., having been filed in opposition to said respondents' Motion to Dismiss, and this Court having heard oral argument on the respondents' Motion to Dismiss and having filed herein his Memorandum

Decision and Order dated October 29, 2007 in which this Court having determined that a peremptory writ of mandate should issue in the premises and that said Petitioner has no other plain, speedy, or adequate remedy in the ordinary course of law and that Respondent David R. Tuthill Jr. abused his discretion in failing to properly respond to Petitioner's water delivery call consistent with his statutory duty pursuant to Idaho Code § 42-602;

NOW, THEREFORE, you, David R. Tuthill, Jr., in your official capacity as Director of the Idaho Department of Water Resources, and The Idaho Department of Water Resources, are hereby commanded to make a determination on or before January 15, 2008 as to whether the Petitioner A & B Irrigation District, the holder of certain ground water right #36-2080, is suffering material injury in accordance with Rule 42 of the Conjunctive Management Rules and, in the event that the Director makes a finding of material injury in accordance with Rule 42, the Director shall respond to the water delivery call of A & B Irrigation District in accordance with Rules 20.02 and 40 of the Conjunctive Management Rules consistent with I.C. § 42-602; AND I DO ALSO HEREBY COMMAND that you make known to me before the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Minidoka, on or before January 15, 2008, how you have executed this Writ, and have you then and there this Writ.

WITNESSETH the Honorable John K. Butler, District Judge of said District Court, this 6 day of November, 2007.

  
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John K. Butler  
District Judge