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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Idaho Ground Water Appropriators, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

A & B IRRIGATION DISTRICT,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN in his
official capacity as Intèrim Director of the
Idaho Department of Water Resources,

Respondents.

Case No. CV-2009-647

**MOTION TO AUGMENT AND
CORRECT THE AGENCY RECORD**

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 A GROUND WATER
MANAGEMENT AREA

THE IDAHO GROUND WATER APPROPRIATORS, INC., MAGIC VALLEY GROUND
WATER DISTRICT, AND NORTH SNAKE GROUND WATER DISTRICT (collectively the
“Ground Water Users”) respectfully move this Court pursuant to Idaho Appellate Rules 30 and
30.1(b) for an Order augmenting and correcting the agency record in the above-captioned case to
include the following documents:

1. Exhibit 476, an illustrative graph depicting the peak month delivery in A & B system (averaged throughout A & B system) admitted at the hearing on December 8, 2008.

2. Exhibits 229A through O, which depict water use data from A & B's lay witness Tim Eames admitted at the hearing on December 8, 2008.

3. Exhibits 230A through N, which depict water use data from A & B's lay witness Tim Adams admitted at the hearing on December 9, 2008.

4. Exhibits 231A through F, which depict water use data from A & B's lay witness Ken Kostka admitted at the hearing on December 9, 2008.

5. Exhibits 234A through J, which depict water use data from A & B's lay witness Harold Mohlman admitted at the hearing on December 9, 2008.

GROUNDS FOR MOTION

The Ground Water Users recently discovered the above-listed errors in the Agency Record that has been filed with this Court for judicial review. These errors were clearly inadvertent and unintentional. The Ground Water Districts did not notice these errors in the agency record until they were preparing a response brief to A & B Irrigation Districts' opening brief. Additional details and an explanation concerning these documents is set forth below.

Exhibit 476 was originally identified in the proceeding as Exhibit 155A. Modifications to Exhibit 155A were made and this exhibit was recreated and renumbered to Exhibit 476. The hearing officer allowed this exhibit to be admitted into the record for illustrative purposes only. The following excerpt from the hearing transcripts shows that Exhibit 476 was admitted: "Exhibits 476, 479, 480, and 481 are admitted for illustrative purposes. 477 and 574 are admitted for all purposes." Tr. p. 725, L. 18-24.

Exhibits 229A–O were provided by A & B Irrigation District through lay witness Tim Eames. Exhibit 229A summarizes the data provided in Exhibits 229B–O. The exhibits were

discussed with the witness at hearing. Eames Testimony, Tr. Vol. IV, p. 832, L. 8-12, p. 843, L. 23 – p. 844, L. 16, p. 844, L. 17 – p. 845, L. 22.

Exhibits 230A – N were provided by A & B Irrigation District through lay witness Tim Adams. Exhibit 230A summarizes the data provided in Exhibits 230B – N. The exhibits were discussed with the witness at hearing. Adams Testimony, Tr. Vol. V, p. 926, L. 14 – p. 927, L. 4.

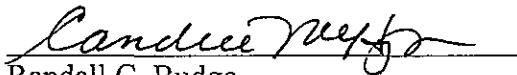
Exhibits 231A - F were provided by A & B Irrigation District through lay witness Ken Kostka. Exhibit 231A summarizes the data provided in Exhibits 231A – F. The exhibits were discussed with the witness at hearing. Kostka Testimony, Tr. Vol. V, p. 948, L. 7-11, p. 986, L. 5-10.

Exhibits 234A – J were provided by A & B Irrigation District through lay witness Harold Mohlman. Exhibit 234A summarizes the data provided in Exhibits 234B – J. The exhibits were discussed with the witness at hearing. Mohlman Testimony, Vol. V, p. 1016, L. 10-17.

Counsel for the Ground Water Users have discussed this motion with counsel for the City of Pocatello, A&B Irrigation District and the Department and there is no objection to the motion. Based on the foregoing, the Ground Water Users respectfully request an Order augmenting the Agency Record to include Exhibits 476, 229A-O, 230A-N, 231A-F, and 234A-J. These Exhibits are provided on enclosed disc. A proposed Order is also provided.

SUBMITTED this 23rd day of February, 2010.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED


Randall C. Budge
Candice M. McHugh,
Attorney for Respondents, Ground Water
Users

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of February, 2010, the above and foregoing document was served in the following manner:

Deputy Clerk Clerk of Minidoka County Court 715 G Street PO Box 368 Rupert, ID 83350 Fax: (208) 436-5272	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery
✓ Phillip J. Rassier Chris Bromley Deputy Attorneys General Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 phil.rassier@idwr.idaho.gov chris.bromley@idwr.idaho.gov	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail
John K. Simpson Travis L. Thompson Barker Rosholt P.O. Box 2139 Boise, Idaho 83701-2139 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail
Sarah A. Klahn White & Jankowski LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail
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