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Attorneys for Petitioner A&B Irrigation District

**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,)	
)	CASE NO. CV 2009-000647
Petitioner,)	
)	Fee Category L.4 - \$101.00
vs.)	
)	
THE IDAHO DEPARTMENT OF WATER)	NOTICE OF APPEAL
RESOURCES and GARY SPACKMAN in his)	
official capacity as Interim Director of the Idaho)	
Department of Water Resources,)	
)	
Respondents,)	
)	
and)	
)	
THE IDAHO GROUND WATER)	
APPROPRIATORS, INC., THE CITY OF)	
POCATELLO, FREMONT MADISON)	
IRRIGATION DISTRICT, ROBERT & SUE)	
HUSKINSON, SUN-GLO INDUSTRIES, VAL)	
SCHWENDIMAN FARMS, INC., DAVID)	
SCHWENDIMAN FARMS, INC., DARRELL)	
C. NEVILLE, SCOTT C. NEVILLE, AND)	
STAN D. NEVILLE,)	
)	
Intervenors.)	
)	

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)
_____)

TO: THE ABOVE NAMED RESPONDENTS, INTERIM DIRECTOR GARY SPACKMAN
AND THE IDAHO DEPARTMENT OF WATER RESOURCES, AND THE PARTIES'
COUNSEL OF RECORD IDENTIFIED ON THE CERTIFICATE OF SERVICE; AND
THE CLERK OF THE ABOVE ENTITLED DISTRICT COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, A&B IRRIGATION DISTRICT ("Appellant")
appeals against the above named respondents to the Idaho Supreme Court from the district
court's *Memorandum Decision and Order on Petition for Judicial Review*, entered in the above
entitled action on May 4, 2010, the Honorable Eric J. Wildman presiding. Judge Wildman
entered a *Judgment* pursuant to I.R.C.P. 54(a) on November 23, 2010.
2. The above named Appellant has a right to appeal to the Idaho Supreme Court, and
the order described in paragraph 1 is an appealable order pursuant to Rule 11(f), I.A.R.
3. The Appellant's preliminary statement of issues it intends to assert on appeal,
which under I.A.R. 17, does not prevent the Appellant from asserting other issues, is as follows:
 - a. Whether the Director erred in concluding that A&B's senior ground water
right with a September 9, 1948 priority date was subject to the provisions of Idaho's Ground
Water Act adopted ex post facto in 1951 and amended several times thereafter, contrary to the
express provisions of the Act which provide that: "This act shall not affect the rights to the use of
ground water in this state acquired before its enactment."
 - b. Whether, if A&B's senior ground water right is subject to the provisions
of Idaho's Ground Water Act, the Director erred in finding that A&B has not been required to
pump water beyond a "reasonable ground water pumping level" notwithstanding the evidence in
the record and the fact no objective pumping level has ever been set by IDWR or the Director
contrary to the Legislature's directive set forth in Idaho Code § 42-226.

4. No order has been entered sealing any portion of the record.

5. The Appellant requests that the transcript of the administrative proceedings held before the Idaho Department of Water Resources be made a part of the record on appeal. The Appellant currently possesses a copy of the transcript, as it was previously prepared in conjunction with the district court's judicial review of this action. A copy of the transcript may be obtained from M&M Court Reporting, phone number 1-800-234-9611.

6. The Appellant requests that the agency record, including the exhibits, be copied and sent to the Supreme Court.

7. I certify:

a. That a copy of this notice of appeal has been served on the reporter.

b. That the fee required for the preparation of the reporter's transcript was paid in conjunction with the district court's judicial review of this action.

c. That the estimated fee for preparation of the clerk's record has been paid.

d. That the appellant filing fee has been paid.

e. That service has been made upon all parties to be served pursuant to Rule 20.

DATED this 20th day of December, 2010.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

Attorneys for Petitioner A&B Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of December, 2010, I served true and correct copies of the *Notice of Appeal* upon the following by the method indicated:

Deputy Clerk
Minidoka County District Court
715 G Street
P.O. Box 368
Rupert, Idaho 83350
Fax: (208) 436-5272

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

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