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SEP 22 2009

DEPARTMENT OF
WATER RESOURCES

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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION
OF WATER TO WATER RIGHTS NOS.
36-02356A, 36-07210, AND 36-07427

(Water District 120)

**GROUND WATER USERS'
PROTEST TO A & B IRRIGATION
DISTRICT'S RULE 43 MITIGATION
PLAN**

IN THE MATTER OF THE
MITIGATION PLAN FILED BY A&B
IRRIGATION DISTRICT

(Blue Lakes Delivery Call)

COME NOW the Idaho Ground Water Appropriators, Inc. (IGWA), North Snake Ground Water District (NSGWD) and Magic Valley Ground Water District (MVGWD) (collectively Ground Water Users), through counsel, and on behalf of their ground water district members and those ground water users who are non-member participants in the Ground Water Users' mitigation activities, and hereby submit this Protest pursuant to IDAPA 37.01.01.155 to A & B Irrigation District's Rule 43 Mitigation Plan (A&B's 2009 Plan).

ORIGINAL

INTRODUCTION

On August 18, 2009, A & B Irrigation District filed a Rule 43 Mitigation Plan which will: a) convert 1,378 acres from a ground water source to a surface water supply; b) use storage water for the surface supply for the on-going conversions; and c) enrollment of 121 acres of ground water acres to the Conservation Reserve Enhancement Program (CREP).

On September 2, 2009, the Idaho Department of Water Resources (Department or IDWR) submitted for publication the *Notice of Application for Approval of A & B Irrigation District's Mitigation Plan To Compensate Blue Lakes Trout Farm, Inc.* The deadline for filing Protests is September 28, 2009.

DISCUSSION

The preliminary grounds for this Protest are as follows:

1. The Ground Water Users file this Protest in order to participate as a party to any proceedings on A&B's 2009 Plan and to reserve the opportunity to review and analyze the activities proposed in A&B's 2009 Plan including the activities' intended contributions to the specific reaches of the Snake River and to Blue Lakes Trout Farm, Inc. in particular.


2. In addition, to questions relating to the technical aspects of A&B's 2009 Plan, there is also a question on how A&B's 2009 Plan is accounted for in conjunction with the *Ground Water Users' Mitigation Plan for 2009 (Blue Lakes)* (Ground Water Users' 2009 Plan).

3. The Ground Water Users filed the Ground Water Users' 2009 Plan on July 6, 2009. The Ground Water Users' 2009 Plan provides Blue Lakes Trout Farm, Inc. a direct delivery of water to its hatchery from Alpheus Creek under water right no. 36-2603C which is owned by MVGWD and NSGWD. The Ground Water Users' 2009 Plan also provides for conversions of irrigated acres from groundwater to surface water and enrollment of groundwater acres in CREP.

The Ground Water Users have proper standing to protest this mitigation plan and have a direct and substantial interest in the outcome of this proceeding. The Ground Water Districts reserve the right to amend this Protest as necessary to include other reasons as may be discovered through the course of this proceeding.

DATED this 22nd day of September, 2009.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED


RANDALL C. BUDGE
CANDICE M. MCHUGH
Attorneys for Ground Water Districts

CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of September, 2009, the above and foregoing was sent to the following by U.S. Mail, proper postage prepaid and by e-mail for those with listed e-mail addresses:

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