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DEPARTMENT OF  
WATER RESOURCES

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Attorney for U. S. Department of Interior, Bureau of Reclamation

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF MITIGATION PLAN	)	
SUBMITTED BY THE IDAHO GROUND	)	RECLAMATION'S PROTEST TO
WATER APPROPRIATORS, INC., IN	)	MITIGATION PLAN
RESPONSE TO THE SURFACE WATER	)	
COALITION DELIVERY CALL	)	
	)	
	)	
	)	

**INTRODUCTION**

The U. S. Department of Interior, Bureau of Reclamation, by and through its attorney, Kathleen Marion Carr, Office of the Field Solicitor, (Reclamation) pursuant to IDAPA 37.03.11.043 protests *IGWA's Mitigation Plan for the Surface Water Coalition Delivery Call* filed on November 9, 2009 ("*mitigation plan*"). The initial grounds for this Protest are set out below.

**INITIAL GROUNDS FOR PROTEST  
AND RELIEF SOUGHT**

1. The mitigation plan fails to satisfy the standards set forth IDAPA 37.03.11.043 and in the *Order on Judicial Review, A&B Irrigation District v. Spackman*, Case No. 2008-0000551 (July 24, 2009), which requires that juniors "transfer

replacement water in the season of injury” or, alternatively, provide that “assurances be in place such that replacement water can be acquired and will be transferred in the event of a shortage.”

2. Conditions limiting the availability of replacement water under the mitigation plan are inconsistent with (a) the standards referenced above, (b) the exercise of senior water rights, and/ or (c) the Director’s statutory duty to administer water rights.
3. The mitigation plan fails to identify the water rights for which the benefit of the mitigation plan is proposed, as required by IDAPA 37.03.11.043.b.
4. The mitigation plan fails to provide sufficient information, as required by IDAPA 37.03.11.043.d., to allow the Director and parties to determine the adequacy of the plan.
5. In Part III of its mitigation plan, IGWA refers to legal issues pending before the SRBA Court. To the extent IGWA is attempting to raise these issues before the Director, Reclamation objects on the basis that jurisdiction to resolve those issues resides in the SRBA Court.

Reclamation reserves its right to amend this protest and present additional grounds.

#### SERVICE ADDRESSES

Please provide information concerning this matter to the following addressees:

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Dated this 14 day of December, 2009.

  
KATHLEEN MARION CARR

CERTIFICATE OF SERVICE

The undersigned certifies that on the 14 day of December 2009, a true and correct copy of the within and foregoing document was served as follows:

**Via Hand-Delivery**

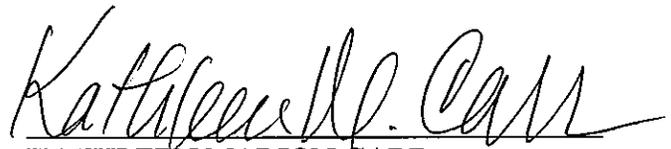
Director  
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**On the following person(s) by U. S. Mail**

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