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

RECEIVED
JUL 09 2010
DEPT. OF WATER RESOURCES
SOUTHERN REGION

IN THE MATTER OF SOUTHWEST AND)
GOOSE CREEK IRRIGATION DISTRICTS) Docket No.: CM-MP-2010-01
MITIGATION PLAN FOR THE SURFACE)
WATER COALITION DELIVERY CALL) **SURFACE WATER COALITION'S**
) **JOINT PROTEST**
)
)
)

COMES NOW, A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR
DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT,
MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, and TWIN
FALLS CANAL COMPANY, (hereinafter "Surface Water Coalition" or "SWC"), by and
through their attorneys of record, Barker Rosholt & Simpson, LLP, Fletcher Law Office and
Capitol Law Group, PLLC, and hereby file this *Protest* to Southwest and Goose Creek Irrigation
SURFACE WATER COALITION JOINT PROTEST

503525 \$175⁰⁰
by AM 7/9/10

Districts' ("SWID") *Mitigation Plan for the Surface Water Coalition Delivery Call* ("Mitigation Plan"), filed with the Idaho Department of Water Resources ("Department") on June 16, 2010 pursuant to the provisions of Conjunctive Management Rule 43, IDWR Procedural Rule 250 and other applicable law.

The SWC is authorized to oppose the Mitigation Plan due to the fact that the Plan attempts to mitigate injury to the SWC's senior water rights caused by the members of SWID.

The initial bases for the SWC's *Protest* are as follows:

1. The Mitigation Plan does not identify, with particularity, the water rights benefiting from the Mitigation Plan.
2. The Mitigation Plan does not identify, with particularity, the water supplies proposed to be used for mitigation and any circumstances or limitations on the availability of such supplies.
3. The Mitigation Plan is vague and ambiguous and provides no opportunity to evaluate the reliability of the source of replacement water over the term in which it is proposed to be used under the Mitigation Plan, since the precise source of replacement water is not specified.
4. The Mitigation Plan does not identify that it will provide replacement water, at the time and place required by the SWC's senior priority water rights, sufficient to offset the depletive effect of SWID's ground water withdrawals on the Snake River at such time and place necessary to satisfy the SWC's senior priority water rights.
5. The Mitigation Plan contains no "contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable" and therefore violates Rule 43.03.c.

6. The Mitigation Plan claims credit for past mitigation actions occurring since 2003, but does not address past injury caused to the SWC senior priority water rights.

7. The Mitigation Plan does not identify how injury to the SWC's right to reasonable carryover storage will be addressed.

8. The Mitigation Plan seeks credit for 751 acres enrolled in the federal CREP program but does not identify SWID's contribution to the program or any basis for obtaining mitigation credit for this program.

9. The Mitigation Plan seeks credit for 2,378 voluntarily curtailed acres but does not identify specific contracts with landowners to ensure these acres remain curtailed in the future for the term of the plan.

10. In general, the Mitigation Plan is vague and ambiguous, does not provide for adequate mitigation, provides no certainty that replacement water will be delivered to prevent injury, is contrary to existing findings and determinations of the Director and the District Court, is not in compliance with Idaho law, does not provide a reliable source of replacement water, could result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge and otherwise fails to adequately mitigate for injury caused by junior ground water users within SWID.

11. For such other and further reasons as may be discovered or offered at the hearing on this matter.

Wherefore, the SWC requests that the Director deny and dismiss the Mitigation Plan, and for such other relief as the Director deems proper.

DATED this 9th day of July, 2010.

BARKER ROSHOLT & SIMPSON LLP



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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 2010, I served a true and correct copy of the foregoing **SURFACE WATER COALITION'S JOINT PROTEST** by email and by depositing same in the United States mail, postage prepaid, addressed to the following:

William Parsons
Parsons Smith Stone Loveland & Shirley LLP
P.O. Box 910
137 W. 13th St.
Burley, Idaho 83318
wparsons@pmt.org



Travis L. Thompson

Idaho Department of Water Resources Receipt

Receipt ID: S031525

Payment Amount \$175.00 Date Received 7/9/2010 4:00 PM Region SOUTHERN

Payment Type Check Check Number 1173

Payer Barker Rosholt & Simpson LLP

Comments Protest of SW and Goose Creek Irrigation Districts Mitigation Plan for the Surface Water Coalition Delivery Call.
Protest on behalf of A&B ID, AFRD#2, BID, Milner ID, Minidoka ID, NSCC and TFCC

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$175.00	PROTESTS	64103	0229	21		1155



Signature Line (Department Representative)