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DEPARTMENT OF
WATER RESOURCES

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IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE UPPER BIG
LOST RIVER GROUND WATER
ASSOCIATION 2017 MITIGATION
PLAN

Docket No. CM-MP-2017-001

IGWA'S NOTICE OF PROTEST

Idaho Ground Water Appropriators, Inc. (IGWA), by and through counsel, files this Notice of Protest of the *Mitigation and Aquifer Enhancement Plan of the Upper Big Lost Ground Water Association Users* ("Mitigation Plan" or "Plan") filed with the Idaho Department of Water Resources ("IDWR" or "Department") on October 13, 2017.

This protest is filed because it is unclear whether or to what extent the Mitigation Plan proposes to mitigate injury to holders of groundwater rights that divert from the Eastern Snake Plain Aquifer (ESPA). The substance of the Plan suggests it is limited to mitigating injury to surface water rights in Basin 34. However, the Plan states it is submitted pursuant to both the Water Distribution Rules for Water District 34 ("Water District 34 Rules") and the Rules for Conjunctive Management of Surface and Ground Water Sources ("CM Rules").

IGWA does not protest the Mitigation Plan as submitted under the Water District 34 Rules. This protest pertains to the submission of the Plan under the CM Rules.

The CM Rules "prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply." (CM Rule 1.) The central feature of the Rules is a determination of whether or to what extent the holder of a senior-priority right is suffering material injury. (CM Rule 42.) A finding of injury may result in curtailment unless "use of water under the junior-priority right is covered by an approved and effectively operating mitigation plan." (CM Rule 42.02.)

The submission of the Mitigation Plan under the CM Rules calls upon the Director to determine whether it will effectively mitigate injury to senior rights. CM Rule 43 prescribes

several factors that may be considered. (CM Rule 43.03.) It further requires that the plan include such information as is necessary to enable the Director to properly evaluate these factors. (CM Rule 43.01.d.)

The Mitigation Plan should be summarily dismissed as submitted under the CM Rules because it does not contain information necessary to enable either the Director or holders of senior-priority water rights to evaluate, even at a precursory level, whether the Plan will prevent injury to senior rights.

First and foremost, the Plan does not identify the senior water rights that it proposes to benefit as required by CM Rule 43.01.b. Without this information, it is impossible to evaluate whether it will prevent injury.


Second, the Plan does not identify the nature or extent of the injury or anticipated injury it proposes to mitigate. This is particularly important because the Plan was not submitted in response to a delivery call but to an anticipated delivery call. Without knowing what injury is intended to be mitigated, it is impossible for holders of senior rights to evaluate or effectively defend against the Plan.

For these reasons, IGWA protests the Mitigation Plan as filed under the CM Rules. This protest may be resolved either by (a) the Upper Big Lost River Ground Water Association withdrawing its Plan as filed under CM Rule 50, (b) the Upper Big Lost River Ground Water Association filing a pleading to clarify that the Plan is not intended to mitigate injury to holders of groundwater rights that divert from the ESPA, or (d) the Director dismissing the Plan as filed under the CM Rules for failing to contain minimum informational requirements under CM Rule 43.01.d.

IGWA reserves the right to protest the Mitigation Plan for other reasons based on information that may be discovered in this matter.

DATED this 1st day of December, 2017.

RACINE OLSON NYE & BUDGE, CHARTERED

By: 
Thomas J. Budge

CERTIFICATE OF SERVICE

I certify that on this the 1st day of December, 2017, the foregoing document was served on the following persons in the manner indicated.


Signature of person mailing form

Gary Spackman, Director Idaho Department of Water Resources 322 East Front Street P.O. Box 83720 Boise, Idaho 83720-0098 kimi.white@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 checked="" type="checkbox"/> E-mail
Upper Big Lost River Ground Water Association P.O. Box 122 Mackay, Idaho 83251 UBLRGWA@gmail.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 checked="" type="checkbox"/> E-mail