

David R. Tuthill, Jr.
Manager, Innovative Mitigation Solutions, LLC
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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR) APPLICANT’S RESPONSE TO
PERMIT NOS. 37-22682 AND 37-22852 IN) MOTION TO COMPEL
THE NAME OF INNOVATIVE)
MITIGATION SOLUTIONS, LLC)

Innovative Mitigation Solutions, LLC provides this response to *Motion to Compel* filed on May 11, 2015 by Protestants Thomas M. O’Gara Family Trust and Lower Snake Aquifer Recharge District (“Two Protestants”).

The Two Protestants have requested the Hearing Officer to issue an order compelling the Applicant to disclose financial information prior to the hearing in this matter.

The Two Protestants correctly state that the statutes and rules require the Applicant to submit financial statements. The question here concerns the timing and distribution of this information.

IDAPA 37.03.08.045.01.d.i states as follows:

- i. An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director. This showing is required as described in Subsection 040.05.c. **or at the time the hearing provided by Subsection 040.05.c. is conducted.** Emphasis added.

Due to the private nature of financial information, in the experience of the Applicant this information has historically been disclosed privately to the Hearing Officer in the context of the hearing. Complete financial information does not become a matter of public record but instead the assessment of how much information to make a part of the hearing record is left to the judgment of the Hearing Officer.

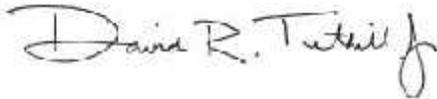
Consider the impact of requiring public disclosure of financial information as requested by the Two Protestants. If an applicant could be required to publically disclose financial information prior to a hearing, all of this information would be part of the public domain and available for all to see. This could have a chilling effect on the desire of an applicant to file a water right application in the State of Idaho, which

would be contrary to the Constitution of the State of Idaho, and contrary to the statutes and rules that provide for orderly and fair opportunities to appropriate water in Idaho.

The Applicant intends to submit the required information in the hearing that has been set to be held starting June 8, 2015, three weeks hence.

In summary, the Hearing Officer is requested to deny this Motion to Compel.

Dated this 18th day of May, 2015

A handwritten signature in cursive script that reads "David R. Tuthill, Jr." The signature is written in dark ink and is positioned to the left of the typed name.

David R. Tuthill, Jr.

Manager, Innovative Mitigation Solutions, LLC