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

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 37-22682 & 37-22852 in the
name of Innovative Mitigation Solutions, LLC

**REPLY IN SUPPORT OF MOTION
TO COMPEL**

COME NOW, Protestants, the THOMAS M. O’GARA FAMILY TRUST and LOWER SNAKE RIVER AQUIFER RECHARGE DISTRICT, by and through counsel of record, and submit this reply in support of their motion for an order compelling the Applicant to disclose financial information.

The Applicant’s response ignores the requirements of IDAPA 37.03.08.040.05. This language was quoted in its entirety in the Protestants’ motion and mandates that an “applicant *shall submit* a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.” Nothing in the regulations allows this information to be hidden from the Protestants.

The Applicant relies entirely on IDAPA 37.03.08.045.01.d.i, which states that financial information may be provided either before or at hearing. Again, nothing in that provision states that the information may be hidden from the Protestants.

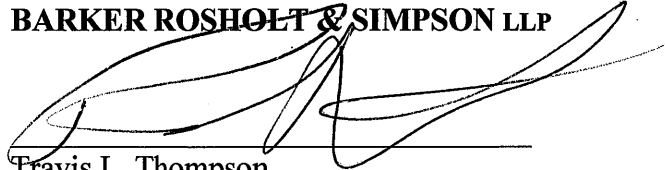
Idaho law places a clear burden on applicants seeking to divert Idaho's water resources. This includes a showing that financial resources are available for the contemplated diversion. In addition, Idaho law allows "any person, firm, association or corporation concerns in any such application" to file a protest. I.C. § 42-203A(4). Those protestants have a right to review and address any information addressing the Applicant's ability to meet the standard of proof. It is simply a matter of due process.

The Applicant's assertion that there would be a "chilling effect" if the Hearing Officer were to allow Protestants to review an applicant's financial information is just a red herring. The Applicant provides no basis for this assertion. Indeed, the Department regularly receives applications for permit and applicants regularly submit their financial information required by I.C. § 42-203A(5)(d) and IDAPA 37.03.08.40.5.f, IMS has made no showing of any factual or legal entitlement to keep the financial information it is required to submit to the department by law hidden from any potential protestants.

Accordingly, the Hearing Officer should issue an order compelling the disclosure of financial information supporting the Applicant's burden of showing that it has "sufficient financial resources with which to complete the work involved" to accomplish the anticipated beneficial use and the plans and specifications and estimated construction costs of the works proposed. This is particularly important here, where IMS appears to be a shell corporation formed solely for the purpose of prosecuting this application. Without the required disclosure neither the department nor the Protestants will know for sure.

DATED this 20th day of May, 2015.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'Travis L. Thompson', is written over a horizontal line. The signature is stylized and somewhat cursive.

Travis L. Thompson
Paul L. Arrington

*Attorneys for Lower Snake River Aquifer Recharge
District, et al.*

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2015, I served a true and correct copy of the foregoing, via email to the following:

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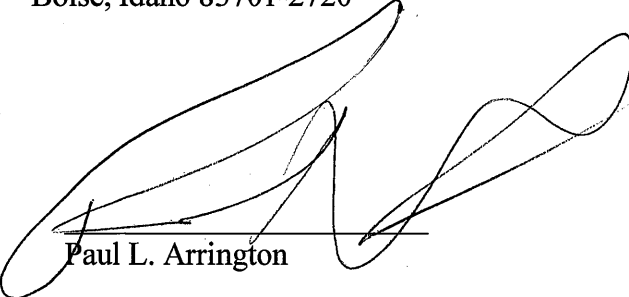
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