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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

)	Docket No. AA-GWMA-2016-001
)	
IN THE MATTER DESIGNATING THE)	FREMONT MADISON
EASTERN SNAKE PLAIN AQUIFER GROUND)	IRRIGATION DISTRICT,
WATER MANAGEMENT AREA)	MADISON GROUND WATER
)	DISTRICT AND IDAHO
)	IRRIGATION DISTRICT'S
)	MEMORANDUM SUPPORTING
)	THE NEED TO PROCEED TO
)	HOLD A HEARING ON THE
)	ESPA GWMA ORDER
)	
)	

Fremont Madison Irrigation District (FMID), Madison Ground Water District (MGWD) and Idaho Irrigation District (IID), acting for and on behalf of its members, by and through the undersigned counsel (hereinafter collectively referred to as Upper Valley Intervenor or "UV Intervenor"), and pursuant to the Director of the Department of Water Resources' *Order Establishing Briefing Deadlines*, Dated April 24, 2017, hereby submit this Memorandum supporting the need to proceed to hold a hearing on the ESPA GWMA Order.

Having reviewed the *City of Pocatello's Memorandum Regarding Procedural Posture*,

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which was filed by the City of Pocatello with the Idaho Department of Water Resources on April 14, 2017, UV Intervenors hereby fully join in the Pocatello's arguments set forth in its *Memorandum*. Also, having been granted party status as intervenors, UV Intervenors are entitled to fully participate and be heard, including as to the procedural issues addressed by the withdrawal of Sun Valley from the matter, in that UV Intervenors maintain that they are "aggrieved" parties as a result of the *GWMA Order* issued on November 2, 2016.

UV Intervenors oppose the establishment of a Ground Water Management Area under Idaho Code § 42-233b and their interest in this matter is that they believe they are "aggrieved" by the *GWMA Order* for several reasons, including but not limited to the following:

1. Idaho Code § 42-233b, by its own definition, is only appropriate when there is a determination that the "designated part" of the basin to be covered is "approaching the conditions of a critical ground water area". Because the *GWMA Order's* designated part covers the area of the basin where UV Intervenors divert from the basin, there would necessarily need to be shown that the area is "approaching" critical ground water conditions. However, this is clearly not the case in the upper reaches of the Snake River Basin. To have a Ground Water Management Area cover such a large and diverse area, is overly broad. A one size fits all approach in dealing with the current lower valley aquifer issues should not be taken. If there truly is an area within the ESPA which meets the definition of a "critical ground water area" then that area and only that area should be the "designated part".

2. Idaho Code § 42-233b grants far too broad of discretion to the Director of the Department of Water Resources in that he "may approve a ground water management plan for

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the area” and “managing the effects of ground water withdrawals” without details as to what limitations would be imposed on the Director’s authority to do so. At the very minimum, this seldom if ever used statute should be readdressed by the Legislature to impose sideboards on the “discretion” of the Director, especially future Directors who may not agree to allow the present settlement among the parties process to proceed as has been the case with the present Director.

3. Idaho Code § 42-233b grants the Director the right to approve any application for permits within a GWMA only “after he has determined on an individual basis that sufficient water is available and that other prior water rights will not be injured.” However, there is no need for this right to be granted to the Director in that there exists a moratorium on any new permit without it being fully mitigation pursuant to a approved mitigation plan already covered by statute and which grants the same rights of protection as would be authorized by the GWMA statute.

4. The present and pending Ground Water Districts, as bound by the settlement agreement between IGWA and the SWC are sufficiently structured and bound to comply with the goal of stabilizing the ESPA and do not require an additional layer of authority over them beyond the Director’s obligation to provide notice of potential curtailment for those priority rights who are not covered by a mitigation plan.

5. As a result of the pending formation of Ground Water Districts in the upper reaches of the ESPA, virtually all of the areas of significant pumping on the ESPA are now or will be covered by fully authorized Ground Water Districts, thus dispelling the argument that many pumpers on the ESPA are not participating in the terms and conditions of the IGWA/SWC

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settlement agreement. Therefore, the *GWMA Order* is not required to insure that the stragglers are required to participate.

Bottom line is that the above arguments as well as others which will be made by the other Intervenor, entitles the Intervenor's concerns to be addressed in a hearing before a Ground Water Management Area should ever be ordered on the entire ESPA area.

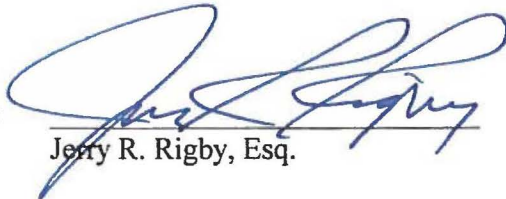
JOINDER IN REQUEST FOR HEARING

In the event the Director does not re-issue or otherwise withdraw the *GWMA Order* or permit the current parties—including UV Intervenor, to proceed to hearing in this contested case, based upon the above positions and arguments, UV Intervenor hereby join with those who have already requested a hearing pursuant to Idaho Code § 42-170A)3) on the *GWMA Order*.

Dated this 4th day of May, 2017.

RIGBY, ANDRUS & RIGBY LAW, PLLC

By:



Jerry R. Rigby, Esq.

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mail, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 4th day of May, 2017.

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