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

IN THE MATTER OF THE MITIGATION
PLAN FILED BY THE IDAHO GROUND
WATER APPROPRIATORS FOR THE
DISTRIBUTION OF WATER TO WATER
RIGHT NOS. 36-02551 AND 36-07694
IN THE NAME OF RANGEN, INC.

Docket No. CM-MP-2014-03

**PROTEST TO IGWA'S SECOND
MITIGATION PLAN**

BUCKEYE FARMS, INC. (the "Buckeye"), by and through their attorneys of record, file this *Protest to the Second Mitigation Plan and Request for Hearing*, filed by the Idaho Ground Water Appropriates, Inc. ("IGWA") on March 10, 2014 in the above matter. This protest is filed pursuant to Rule 43 of the CM Rules and Rule 250 of the Department's Rules of Procedure.

IGWA's second mitigation plan proposes to acquire water owned by the Idaho Department of Fish & Game and divert that water to the Rangen facilities. The water would be diverted from Tucker Springs and piped to the Rangen facilities.

Buckeye protests the second mitigation plan for the following reasons:

1. The mitigation plan is not in compliance with Idaho Law, as required by CM Rule 43.03.a, in that it will take water relied upon by both junior and senior water users below Tucker Springs – including on Riley Creek. The Fish and Game water right is a nonconsumptive fish propagation right. The water flowing through the Fish and Game facility has historically been available for diversion and use by water users below the facility with both senior and junior

priorities. This mitigation plan would unlawfully convert the Fish and Game right into a fully consumptive right – in that it will totally remove the water from Tucker Springs and Riley Creek and place it in a different spring reach that is not connected to the Tucker Springs reach. Buckeye diverts water from Riley Creek and will be impacted by these reduced flows. Further, Buckeye has rights on Riley Creek which are subject to conditions dependent upon flows in certain reaches of Riley Creek. Such conditions may be triggered if such transfer of water is completed.

2. The mitigation plan is not “consistent with the conservation of water resources” or the “public interest” and “injures other water rights.” CM Rule 43.03.j. The Department is well aware of the depletions in spring flows in the Thousand Springs area – an issue that has been emphasized in the Rangen Proceedings. All springs are suffering the effects of a declining water supply. This mitigation plan essentially proposes to “rob Peter to pay Paul,” by removing water from one declining spring reach in order to augment water supplies in another declining spring reach. The mitigation plan does nothing to solve the problem of declining spring flows. Rather, it shifts the burden of injury to water users below Tucker Springs, including Riley Creek. Such a plan is not “consistent with the conservation of water resources” or the “public interest.”

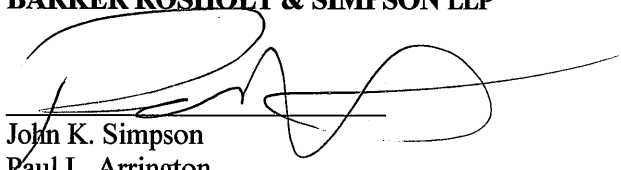
3. The mitigation plan does not does not provide any “monitoring and adjustments to protect senior-priority water rights from material injury.” CM Rule 43.03.k. In fact, the mitigation plans proposes to intentionally injure senior water rights below Tucker Springs, including on Riley Creek, by removing 9.1 c.f.s. from the reach. There are several water rights below the Tucker Springs that are senior to the Fish and Game rights. There is no plan to monitor and adjust diversions to Rangen when senior rights below Tucker Springs are injured as a result of the diversions proposed under the mitigation plan.

4. For such other and further reasons as may be discovered or set forth at the hearing on this matter.

Accordingly, Buckeye protests IGWA's second mitigation plan and requests that the Director deny and dismiss that plan.

DATED this 4th day of March, 2014.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
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Attorneys for Buckeye Farms, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2014, I served a copy of the foregoing **PROTEST TO IGWA'S SECOND MITIGATION PLAN**, upon the following by the indicated method:

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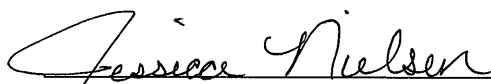
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