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**RECEIVED**  
**MAY 04 2015**  
DEPT OF WATER RESOURCES  
SOUTHERN REGION

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

IN THE MATTER OF THE MITIGATION )  
PLAN FILED BY THE CITY OF POCATELLO ) Docket No.: CM-MP-2015-001  
)  
) **SURFACE WATER COALITION'S**  
) **JOINT PROTEST**  
)  
\_\_\_\_\_ )

COME NOW, A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR  
DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT,  
MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, and TWIN  
FALLS CANAL COMPANY, (hereinafter "Surface Water Coalition" or "SWC"), by and  
through their attorneys of record, Barker Rosholt & Simpson, LLP, and Fletcher Law Office and  
hereby file this *Protest* to the City of Pocatello's ("Pocatello") *Rule 43 Mitigation Plan*

(“Mitigation Plan”),<sup>1</sup> filed with the Idaho Department of Water Resources (“Department”) on April 7, 2015 pursuant to the provisions of Conjunctive Management Rule 43, IDWR Procedural Rule 250 and other applicable law.

The SWC is authorized to oppose the Mitigation Plan due to the fact that the Plan attempts to mitigate injury to the SWC’s senior surface water rights caused by Pocatello’s junior priority ground water rights. The initial bases for the SWC’s *Protest* are as follows:

1. The Mitigation Plan does not identify, with particularity, the water rights benefiting from the Mitigation Plan.
2. The Mitigation Plan does not identify, with particularity, any circumstances or limitations on the availability of the water supply proposed to be used for mitigation.
3. The Mitigation Plan does not identify that it will provide replacement water, at the time and place required by the SWC’s senior priority surface water rights, sufficient to offset the depletive effect of Pocatello’s ground water withdrawals on the Snake River at such time and place necessary to satisfy the SWC’s senior priority water rights.
4. The Mitigation Plan contains no “contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable” and therefore violates Rule 43.03.c.
5. The Mitigation Plan does not identify how injury to the SWC’s right to reasonable carryover storage will be addressed.
6. In general, the Mitigation Plan is vague and ambiguous, does not provide for adequate mitigation, provides no certainty that the mitigation storage water will be delivered to prevent injury, does not provide a reliable source of replacement water, could result in the

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<sup>1</sup> The Coalition is filing this joint protest to maintain standing on Pocatello’s mitigation plan and future implementation. The Coalition and Pocatello are participating in good faith negotiations over the plan and, if successful, intend to file a stipulation to resolve this protest without the necessity of a formal administrative hearing.

diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge and otherwise fails to adequately mitigate for injury caused by Pocatello's junior priority ground water rights.

7. For such other and further reasons as may be discovered or offered at the hearing on this matter.

DATED this 4<sup>th</sup> day of May, 2015.

**BARKER ROSHOLT & SIMPSON LLP**



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*Attorneys for A&B Irrigation District,  
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Company, North Side Canal Company, and  
Milner Irrigation District*

**FLETCHER LAW OFFICE**



*Attorneys for American Falls  
Reservoir District #2 and Minidoka  
Irrigation District*

### CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of May, 2014, I served a true and correct copy of the foregoing **SURFACE WATER COALITION'S JOINT PROTEST** by email and by depositing same in the United States mail, postage prepaid, addressed to the following:

Sarah Klahn  
Mitra Pemberton  
White & Jankowski, LLP  
511 Sixteenth Street, Suite 500  
Denver CO 80202-4224

  
Travis L. Thompson

FOR OFFICE USE ONLY \$175 -  
Fee: ~~\$25.00~~  
Receipt No. S034750  
Receipt by: DM  
Date Received: 5.4.2015

# Idaho Department of Water Resources Receipt

Receipt ID: S034750

Payment Amount \$175.00 Date Received 5/4/2015 4:19 PM Region SOUTHERN

Payment Type Check Check Number 1349

Payer BARKER ROSHOLT & SIMPSON LLP

Comments NOTICE OF PROTEST AGAINST CITY OF POCA TELLO MITIGATION PLAN; FILED ON BEHALF OF: A&B IRRIGATION DIST, AMERICAN FALLS RESERVOIR DIST #2, BURLEY IRRIGATION DIST, MILNER IRRIGATION DIST, MINIDOKA IRRIGATION DIST, NORTH SIDE CANAL CO. & TWIN FALLS CANAL CO.

## Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$175.00	PROTESTS	64103	0229	21		1155



Signature Line (Department Representative)