BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF ) MEMORANDUM IN SUPPORT OF PETITION TO
APPLICATIONS FOR PERMIT NO. ) INTERVENE
37-22682 AND 37-22852 IN THE )
NAME OF: INNOVATIVE ) MITIGATION SOLUTIONS LLC
COMES NOW, the Idaho Department of Fish and Game ("IDFG"), by and through the undersigned deputy attorney general and hereby petitions to intervene in the above-entitled matter pursuant to Rules of Procedure of the Idaho Department of Water Resources ("Department") 350 through 354 (IDAPA 37.01.01.350-354).

The Department's Rule of Procedure 350 provides that "[p]ersons not applicants, or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding." IDAPA 37.01.01.350. A timely-filed petition for intervention shall be granted
if the petition “shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues...unless the applicant’s interest is adequately represented by existing parties.” Id. at 37.01.01.353. A petition is timely if it is filed “at least fourteen (14) days before the date set for the formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice.” Id. at 37.01.01.352.

On March 11, 2014, IDFG submitted protest letters to the Department and the applicant. However, the protest period had ended. A consolidated Pre-Hearing Conference is set for September 8, 2014.

The IDFG is a duly established executive department of the State of Idaho. Idaho Code §§ 36-101 and 67-2402(1). The statutory policy of the State of Idaho is to preserve, protect, perpetuate, and manage all fish and wildlife. Idaho Code § 36-103(a). The IDFG, acting under the supervision of the Idaho Fish and Game Commission, has the responsibility to carry out that policy. Idaho Code §§ 36-102(a) and -103(b).

The IDFG has a direct and substantial interest in this water right application due to potential effects on the local public interest, which include resident fisheries and forested riparian habitats associated with the Big Wood River drainage. It is not the purpose of IDFG to support or oppose the proposed project. The purpose of IDFG’s participation in this proceeding is to provide technical information addressing potential effects on fish and wildlife and how such effects might be mitigated.

IDFG’s intervention will not disrupt the proceedings or cause delay because no hearing date has been set in this matter. Nor will IDFG’s intervention prejudice the existing parties or broaden the issues, as questions related to the source of water and the potential effects on fish and wildlife resources are known to the Department and to the applicant. While other parties may raise the issue
of potential impacts to fish and wildlife resources, IDFG is in the best position to provide technical information as to how such impacts may be mitigated. Granting the Petition will ensure that IDFG has an opportunity to participate in future proceedings.

The IDFG's Petition to Intervene meets the standards required by the Department's Rules, and therefore the IDFG respectfully requests an order granting intervention in this proceeding.

IDWR has advised that the filing fee for this Petition to Intervene is $50.00 ($25.00 for each petition). Please initiate the Interagency Billing Process. The PCA is 11406 and the ABC code is B7/TX. Please forward billing documents to Dr. Walt Poole, Idaho Department of Fish and Game, P.O. Box 25, Boise, Idaho 83707.

RESPECTFULLY SUBMITTED this 12th day of June 2014.

W. Dallas Burkhalter
Deputy Attorney General
CERTIFICATE OF SERVICE

I certify that on this 12th day of June 2014, I caused to be served the original and/or copy of the MEMORANDUM IN SUPPORT OF PETITION TO INTERVENE on the following persons:

1. One Original to:
   Allen Merritt, PE, Southern Region Manager
   Idaho Department of Water Resources
   Southern Region
   650 Addison Ave W, Suite 500
   Twin Falls, Idaho 83301-5851
   - U.S. Mail, postage prepaid
   - Hand Delivery
   - Federal Express
     Facsimile: 208-736-3037
   - Statehouse Mail

2. Copies to:
   Innovative Mitigation Solutions
   2918 N El Rancho Pl
   Boise, ID 83704
   Walker Sand & Gravel Ltd. Co.
   Attn: Brad Walker
   PO Box 400
   Bellevue, ID 83313
   Dry Lot LLC
   116 Valley Club Dr
   Hailey, ID 83333
   Office of the Attorney General
   Attn: Harriet Hensley
   PO Box 83720
   Boise, ID 83720-0010
   Heart Rock Ranch LLC
   PO Box 3724
   Hailey, ID 83333
   Dry Lot LLC
   c/o Barker Rosholt & Simpson
   195 River Vista Pl, Ste 204
   Twin Falls, ID 83301
   Trout Unlimited Inc.
   Attn: Peter Anderson
   910 W. Main St, Suite 342
   Boise, Idaho 83702
   Peter Trust LP
   2300 W Sahara Ave, Ste 530
   Las Vegas, NV 89102
   Joyce Gordon & Eric Remais
   c/o Barker Rosholt & Simpson
   195 River Vista Pl, Ste 204
   Twin Falls, ID 83301
   Valley Club Owners Assoc.
   PO Box 6733
   Ketchum, ID 83340
   Idaho Power Company
   c/o Barker Rosholt & Simpson
   Attn: John K. Simpson
   PO Box 2139
   Boise, ID 83701-2139
   Frank Erwin
   711 East Ave N
   Hagerman, ID 83332
   Valley Club Owners Assoc.
   c/o Barker Rosholt & Simpson
   Attn: Travis Thompson
   195 River Vista Pl, Ste 204
   Twin Falls, ID 83301
   Idaho Rivers United
   Attn: Kevin Lewis
   PO Box 633
   Boise, Idaho 83701
   Harry S. Rinker
   PO Box 7250
   Newport Beach, CA 92658-7250

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