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DEPT OF WATER RESOURCES
SOUTHERN REGION

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Attorney for Big Wood Canal Company

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

IN THE MATTER OF APPLICATION FOR) **RESPONSE TO MOTION**
PERMITS NOS. 37-22682 & 37-22852 in) **FOR SUMMARY JUDGMENT**
name of Innovative Mitigation Solutions, LLC)
_____)

COMES NOW, Protestant, BIG WOOD CANAL COMPANY (BWCC), by and through its counsel of record, Hobdey Law Office, PLLC, and responds to the Motion for Summary Judgment filed on behalf of THOMAS M. O’GARA FAMILY TRUST and LOWER SNAKE RIVER AQUIFER RECHARGE DISTRICT (hereinafter Protestants).

Big Wood Canal Company agrees with and adopts the Motion for Summary Judgment and Memorandum in Support of Summary Judgment, submitted by the above-named Protestants.

In addition, Big Wood Canal Company argues that the Applicant has failed to show or allege in the Application that there is sufficient water for the purpose set forth in the Application. As set forth in the Memorandum in Support of Summary Judgment, filed by THOMAS M. O’GARA FAMILY TRUST and LOWER SNAKE RIVER AQUIFER RECHARGE DISTRICT, the ground water and surface water have both been deemed fully appropriated by the Idaho Department of Water Resources. However, Applicant, at pre-hearing conferences although admitting that in some years there will be no water to divert to recharge, has stated that in some years there may be water. Applicant has stated that diversion for recharge would take place in those, as of yet unidentified years, prior to the filling of Magic Reservoir. There is nothing in the Application, or other filings

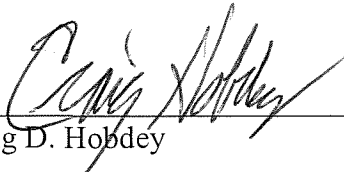
by the Applicant, indicating that BWCC, the holder of the senior storage rights in Magic Reservoir, would agree to such subordination. Therefore, based upon the undisputed fact that the water supply is not sufficient to grant this Application, it should be denied.

Recharge applications have been approved by the Idaho Department of Water Resources, but never have they been approved with the ultimate purpose of selling “credits”. Recharge that is beneficial to the entire watershed, or ground water area, such as the ESPA, may be appropriate. Once a groundwater model has been established and sufficient water identified to be used for recharge such an application may be accepted. However, when the admitted purpose, such as we have in this application, is for the ultimate selling of credits, there is actually no beneficial recharge to the aquifer. In fact, there may be a further depletion to the aquifer. However, the Applicant, cannot set forth with any degree of certainty as to what will happen to the aquifer because no model exists.

There have been mitigation recharge applications approved in the Wood River Valley. Big Wood Canal Company has been involved in these applications for mitigation. These mitigation applications are based upon existing water rights being recharged into the aquifer upon the condition that “a lesser amount” is being taken out of the aquifer. What the Applicant is proposing in this particular application is completely different than any mitigation recharge rights previously approved by the Department in the Wood River Valley.

Therefore, based upon reasoning and arguments set forth in the Memorandum in Support of Motion for Summary Judgment submitted by Thomas M. O’Gara Family Trust and Lower Snake River aquifer Recharge District and upon the above, BWCC urges that the Application be dismissed without further hearing.

DATED THIS 29 day of April, 2015.



Craig D. Hobdey

CERTIFICATE OF SERVICE

I hereby certify that on this 29 day of April, 2015, I served a true and correct copy of the foregoing, **via email** to the following:

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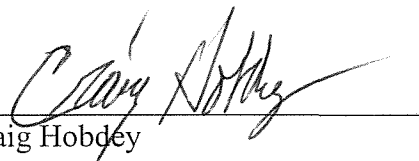
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