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DEPARTMENT OF  
WATER RESOURCES

Michael C. Creamer, ISB #4030  
GIVENS PURSLEY LLP  
601 W. Bannock St.  
P.O. Box 2720  
Boise, Idaho 83701-2720  
Telephone: 208-388-1200  
Facsimile: 208-388-1300  
2481204v1/9955-4

Attorneys for City of Hailey

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

**IN THE MATTER OF APPLICATIONS  
FOR PERMIT NO. 37-22682 & 37-22852, IN  
THE NAME OF INNOVATIVE  
MITIGATION SOLUTIONS LLC**

**CASE NOS. 37-22682 & 37-22852**

**CITY OF HAILEY'S POST-  
HEARING BRIEF**

The City of Hailey ("City" or "Hailey"), through its attorneys Givens Pursley LLP, hereby submits its Post-Hearing Brief in the above-captioned matter. For the reasons discussed below, Application for Permit No. 37-22682 ("Application") should be denied. If the Application is approved, it should be approved with conditions that acknowledge Hailey's interests in protecting its property and facilities and its citizens from potential risks attributable to the Applicant's proposed aquifer recharge activities.

**BACKGROUND AND ARGUMENT**

Hailey intervened in this contested case to assert its interests as they might arise in the course of the proceedings. While Hailey does not oppose aquifer recharge in general, and believes that it may prove to be an important water management tool in the Big Wood Valley, Hailey also has a responsibility to ensure that aquifer recharge occurs in a manner and in

locations that do not threaten or impair City property or facilities or the private property of its citizens. The Application and supporting materials, and the evidence presented by Dr. Tuthill at the hearing fail to demonstrate:

1. the frequency or duration that water actually would be available to be diverted into the Hiawatha Canal (“Hiawatha”);
2. the quantities of water that might be diverted into the Hiawatha or to off-canal sites for recharge purposes;
3. the duration that water recharged into the aquifer will remain in the aquifer;
4. that water could be diverted from the Big Wood River in sufficient quantity, frequency and duration so as to provide any meaningful benefit to the aquifer, to the watershed or to existing or new beneficial uses;
5. how any water diverted into the Hiawatha would be measured, monitored and managed to assure that flows did not exceed existing system capacities and constraints;
6. how ground water levels would be measured, monitored and managed to assure that ground water level increases attributable to recharge will not threaten or impair City property or facilities or the private property of its citizens; and
7. that the Applicant has legal access to all of the places of use identified in the Application—namely real property owned and maintained by the City

for drainage purposes and used by the Hiawatha Canal for irrigation purposes pursuant to an Easement Agreement with the City.<sup>1</sup>

Evidence introduced through Dr. Erick Powell on behalf of Protestants O’Gara *et al*, indicate, among other things, that:

1. water likely would be available for diversion from the Big Wood River into the Hiawatha for recharge only infrequently and for short periods;
2. water likely would be available for diversion from the Big Wood River into the Hiawatha for recharge mainly, if not exclusively, during the irrigation season when system capacity would be limited because the Hiawatha already would be carrying irrigation water for its patrons; and
3. recharge of water in areas adjacent to the Hiawatha could increase ground water levels to an extent that could impair septic drain fields, building foundations, crawl spaces or basements.

The City’s witness Ned Williamson, Esq., testified that Hiawatha runs irrigation water through certain drainage facilities owned by Hailey in the Woodside Subdivision pursuant to a written easement agreement (“Agreement”). However, this Agreement does not cover all drainage facilities owned by the City and used by Hiawatha.<sup>2</sup> Mr. Williamson also testified that there are no agreements with Hiawatha or others in place that would permit use of City property or facilities for recharge activities. Prior City approval would be required for any recharge activities within the City limits and within City-owned property or facilities such as the drainage facilities used by Hiawatha in its irrigation delivery operations.

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<sup>1</sup> See Hailey Exhibits 1, 2 and 3 and testimony of Hailey witness Ned Williamson, Esq., City Attorney for Hailey.

<sup>2</sup> I.e., the Easement does not encompass those drainage facilities owned by the City in Woodside Subdivision Nos. 6 through 9. See Hailey Exhibit 2.

The City's witness Mariel Platt, who is Hailey's Public Works Director, testified that in light of the opinions of Dr. Powell and the known capacity limitations of various crossings and culverts through which the Hiawatha waters currently are conveyed, the City is concerned the Hiawatha may not have the capacity to carry any recharge water. The City also is concerned about ground water level increases predicted by the recharge scenarios that Dr. Powell analyzed. The lack of information supplied by the Applicant concerning the timing, locations, quantities and durations of intended recharge activities exacerbates these concerns.


The City's position is that aquifer recharge may prove to be an important water management tool in the Big Wood Valley. However, given the insufficiency of information provided by the Applicant by which the City might evaluate the potential adverse impacts or benefits of the proposed recharge activities on the City and its residents, the City does not support approval of Application for Permit 37-22682.

If the Department nevertheless determines to approve the Application, the following conditions be included in any permit or license:

1. Any water diverted under this [permit/license] into or through property or facilities owned or maintained by the City of Hailey shall be subject to prior approval by the City of Hailey;
2. Any recharge activities under this [permit/license] occurring within the city limits of the City of Hailey shall be subject to prior approval by the City of Hailey;
3. The [permit/license] holder shall be liable for all property losses or other damages arising out of the exercise of this [permit/license]; and
4. The [permit/license] holder shall have a ground water level and canal flow monitoring plan approved by IDWR in place before any recharge activities may commence using the Hiawatha Canal.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of June, 2015.

GIVENS PURSLEY LLP

By:   
Michael C. Creamer  
*Attorneys for City of Hailey*

## CERTIFICATE OF SERVICE

I hereby certify that on the 30<sup>th</sup> day of June, 2015, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Mat Weaver  
Deputy Director  
Idaho Department of Water Resources  
The Idaho Water Center  
322 E Front Street  
Boise, ID 83720

☐ U.S. Mail, postage prepaid  
☐ Express Mail  
☒ Hand Delivery  
☐ Facsimile

Idaho Department of Water Resources  
Southern Regional Office  
650 Addison Avenue West, Ste 500  
Twin Falls ID 83301-3380

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Innovative Mitigation Solutions, LLC  
2918 N. El Rancho Place  
Boise, ID 83704

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Idaho Water Resource Board  
Michael Orr, Office of the Attorney General  
P O Box 83720  
Boise, ID 83720-0010

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Idaho Dept. of Fish & Game  
Dallas Burkhalter, Office of the Attorney  
General  
P O Box 25  
Boise, ID 83707

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Trout Unlimited Inc.  
Attn: Peter Anderson  
910 W. Main Street, Suite 342  
Boise, ID 83702

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Idaho Dept. of Fish & Game  
Blaine County Commissioners  
206 1<sup>st</sup> Avenue South, Suite 300  
Hailey, ID 83333

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Redstone Partners LLP  
c/o Steve Beevers  
1188 Eagle Vista Court  
Reno, NV 89511

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Idaho Rivers United  
Attn: Kevin Lewis  
PO Box 633  
Boise, ID 83701

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Peter Sturdivant  
PO Box 968  
Hailey, ID 83333

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Eccles Flying Hat Ranch LLC  
Eccles Window Rock Ranch  
PO Box 3028  
Salt Lake City, UT 84110

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Frank Erwin  
711 East Ave N  
Hagerman, ID 83332

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Lane Ranch HOA  
c/o Sun Country Mgmt  
PO Box 1675  
Sun Valley, ID 83353

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Heart Rock Ranch LLC  
PO Box 3724  
Hailey, ID 83333

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Peter Trust LP  
PO Box 642  
Sun Valley, ID 83353

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Big Wood Canal Company  
c/o Craig Hobdey  
PO Box 176  
Gooding, ID 83330

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Bureau of Land Management  
Attn: Fred Price  
1387 S. Vinnell Way  
Boise, ID 83709

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Harry S. Rinker  
PO Box 7250  
Newport Beach, CA 92658

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Walker Sand & Gravel Ltd. Co.  
Attn: Brad Walker  
PO Box 400  
Bellevue, ID 83313

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Thomas M. O'Gara Family Trust, Dry Lot LLC,  
and LSRARD  
c/o Barker Rosholt & Simpson  
Attn: Paul Arrington & Travis Thompson  
195 River Vista Pl., Suite 204  
Twin Falls, ID 83301

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Idaho Power Company  
c/o Barker Rosholt & Simpson  
Attn: John K. Simpson  
PO Box 2139  
Boise, ID 83701-2139

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Brockway Engineering  
2016 N. Washington St., Ste. 4  
Twin Falls, ID 83301

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile



Wood River Land Trust  
c/o Patti Lousen  
119 E. Bullion Street  
Hailey, ID 83333


☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Marie Callaway Kellner  
PO Box 844  
Boise, ID 83701

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

Valley Club Owners Association  
Jack Levin, President  
PO Box 6733  
Ketchum, ID 83340

☒ Email  
☐ Express Mail  
☐ Hand Delivery  
☐ Facsimile

  
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Michael C. Creamer