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DEPARTMENT OF
WATER RESOURCES

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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 RESPONSE TO
APPLICANT'S POST-HEARING
BRIEF**

The City of Hailey ("City"), through its attorneys Givens Pursley LLP, hereby submits this Response to Applicant's Post-Hearing Brief in the above-captioned matter.

The City responds to point out several statements in Mr. Tuthill's Post-Hearing Brief ("Applicant's Brief") regarding issues of concern to the City that are unsupported by, or contrary to, evidence in the record.

Page 5 of Applicant's Brief, includes discussion of the requirement in IDWR's 1993 Amended Moratorium Order¹ that any permitted new development and use of water must have no effect on prior surface and ground water rights because of its location, insignificant

¹ *In the Matter of Applications for Permits for the Diversion and use of Surface and Ground Water within the Eastern Snake River Plain Area and the Boise River Drainage Area* (April 30, 1993).

consumption or mitigation provided. This discussion contains the Applicant's representation that:

[a]ny impacts to water supplies in the reservoir and other water rights must be mitigated to offset any potential injury. Diversion in priority limits impact to existing water rights. Flows returning to the river as a result of ground water recharge provide mitigation of any negative impacts.

However, there is nothing in the record to show that flows returning to the Big Wood River as a result of recharge would mitigate any negative impacts. Neither IMS nor Mr. Tuthill offered any evidence as to the timing, extent or location of any returns of recharged water to the Big Wood River.

Page 7 of the Applicant's Brief includes discussion concerning whether the Application is speculative and states that "[a]s the record reflects, Application for Permit No. 37-22682 was not filed with IDWR until the applicant had obtained leases from the owners of the property at the place of use." As the City's witness Mr. Ned Williamson testified, however, IMS's agreement with the Hiawatha water users does not and cannot authorize use of City-owned property and drainage facilities for recharge, particularly City-owned property and facilities that are not even included in the easement agreement between the City and the Hiawatha Canal water users. *See* Hailey Exhibits 1, 2 and 3.

Page 9 of the Applicant's Brief states that:

[a]pproval by IDWR of Permit No. 37-22682 will not use up all available supplies and take away other opportunities for ground water recharge. In fact, it would pave the way for implementation by others conducting ground water recharge in the valley.


Again, there is no evidence in the record to support this statement. Neither IMS nor Mr. Tuthill analyzed or offered evidence concerning the actual quantity of unappropriated water that may be

reliably available to satisfy the 157 cfs the Applicant seeks, let alone to satisfy any additional appropriations from the Big Wood River for recharge or other beneficial uses.

The City appreciates that Mr. Tuthill is willing to accept the conditions proposed by the City in the event that Application for Permit 37-22682 is approved. However, because of the lack of information submitted with the Application and at the hearing supporting the proposed appropriation for ground water recharge, the City does not support its approval.

RESPECTFULLY SUBMITTED this 15th day of July, 2015.

GIVENS PURSLEY LLP

By: 
Michael C. Creamer
Attorneys for City of Hailey

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2015, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

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