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DEPARTMENT OF
WATER RESOURCES

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For the U.S. Department of the Interior, Bureau of Reclamation

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF GROUND WATER DISTRICTS' APPLICATION FOR APPROVAL OF MITIGATION PLAN FOR THE AMERICAN FALLS REACH OF THE SNAKE RIVER	)	**RECLAMATION'S PROTEST**

The U. S. Department of the Interior, Bureau of Reclamation, by and through its attorney and duly authorized representative, Kathleen Marion Carr, Office of the Field Solicitor, (Reclamation) pursuant to IDAPA 37.01.01.350 *et seq.*, hereby files its protest in the above-captioned contested case.

The U.S. Bureau of Reclamation's address is 1150 North Curtis Road, Suite 100, PN-3100, Boise, ID 83706-1234.

The Bureau of Reclamation has a direct and substantial interest in this proceeding in that it stores, releases, and delivers water pursuant to water rights and SRBA claims they hold[1] in the

[1] The nature and extent of Reclamation's ownership interest in the irrigation component of the storage water rights have been recently determined by the Snake River Basin Adjudication (SRBA) District Court. *See, e.g., In re: SRBA 39576 (Subcase 91-63), Order on Motion for Reconsideration and Order Modifying Court's January 14, 2005, Final Order* (Fifth J. Dist., Idaho Mar. 3, 2005). However, the time for appeal of this decision has not run, and so the proceedings may be ongoing.

Upper Snake River Basin for Minidoka Dam, American Falls Reservoir, Jackson Lake and Palisades Reservoir. These water rights and claims are: 01-211A, 01-214A, 01-217, 01-218, 01-219, 01-2016, 01-4024, 01-4025, 01-2040, 01-284, 01-2064, 01-2068, 01-4052, 01-4055, 01-4056, 01-4057, 01-10042, 01-10043, 01-10044, 01-10045, and 01-10053.

Reclamation can show a direct and substantial interest in the subject matter of this proceeding since part, or all, of its foregoing water rights may still be materially injured under IDAPA 37.03.11.10.14 and 37.03.11.42, if the Department accepts an inadequate or defective mitigation plan contrary Conjunctive Management Rule 37.03.11.43.

It is Reclamation's belief that the submitted Mitigation Plan is wholly inadequate and does not comply with the facial and substantive requirements of the Conjunctive Management Rule 37.03.11.43. The Mitigation Plan provides no certainty of what water will be provided, when, and by what means, but if all else fails , the Applicants assert that they will curtail use for a specified minimum amount of days. There is no information to show that curtailment will deliver water to mitigate part or all of the material injury that Reclamation is incurring by the continued pumping of Applicant's junior ground water pumpers.

Relief Requested

1. Reclamation requests that its protest be granted.
2. Reclamation requests that the mitigation plan be dismissed.
3. Reclamation requests that because of the extensive involvement of the Director in formulating the hydrologic model that the Applicants are relying upon, and because the Director may need to be called as a witness for this proceeding, Reclamation requests that an Independent Hearing Officer be appointed.

Notice of Service

Reclamation hereby requests, pursuant to IDAPA 37.01.01.200, that its duly authorized representative and attorney, Kathleen Marion Carr, and its Manager of Water Rights and Acquisitions, E. Gail McGarry be copied on all subcase orders or pleadings at the following addresses:

Mailing Address:

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550 West Fort Street, MSC-020
Boise, ID 83724

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Mailing and Delivery Address:

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Boise, ID 83706-1234
Phone Number: 208-378-5306
Facsimile Number: 208-378-5305

Based on the foregoing, Reclamation requests that its protest into this case be granted.

Dated this 21 day of March, 2005.

Kathleen Marion Carr

KATHLEEN MARION CARR

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of March 2005, I served a true and correct copy of the foregoing *RECLAMATION'S PROTEST* on the following by the method indicated:

Via Hand Carry

Director Karl Dreher
Idaho Department of Water Resources
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VIA U.S. Mail

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Kathleen Marion Carr