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 DEPT OF WATER RESOURCES  
 SOUTHERN REGION

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

IN THE MATTER OF THE COALITION OF )  
 CITIES MITIGATION PLAN FOR DIRECT ) Docket No.: CM-MP-2015-004  
 DELIVERY AND MANAGED RECHARGE )  
 ) **SURFACE WATER COALITION'S**  
 ) **JOINT PROTEST**  
 )  
 )  
 )

COME NOW, A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR  
 DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT,  
 MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, and TWIN  
 FALLS CANAL COMPANY, (hereinafter "Surface Water Coalition" or "SWC"), by and  
 through their attorneys of record, Barker Rosholt & Simpson, LLP, and Fletcher Law Office and  
 hereby file this *Joint Protest* to the Coalition of Cities' ("Cities") *Mitigation Plan for Direct  
 Delivery and Managed Recharge* ("Mitigation Plan"), filed with the Idaho Department of Water

Resources (“Department”) on June 19, 2015 pursuant to the provisions of Conjunctive Management Rule 43, IDWR Procedural Rule 250 and other applicable law.

The SWC is authorized to oppose the Mitigation Plan due to the fact that the Plan attempts to mitigate injury to the SWC’s senior surface water rights caused by the Cities’ junior priority ground water rights. The initial bases for the SWC’s *Joint Protest* are as follows:

1. The Mitigation Plan does not identify, with particularity, the water rights benefiting from the Mitigation Plan.
2. The Mitigation Plan does not identify, with particularity, any circumstances or limitations on the availability of the water supply proposed to be used for mitigation.
3. To the best of the SWC’s knowledge the Cities do not hold the right to use any storage water in the Upper Snake River Reservoir system. Accordingly, the Cities do not have available storage to provide to the SWC for direct mitigation in any given year.
4. The Cities’ proposed recharge is not defined with any particularity, including location, water rights involved, and the estimated benefits that might accrue from such recharge.
5. The Mitigation Plan does not identify that it will provide replacement water, at the time and place required by the SWC’s senior priority surface water rights, sufficient to offset the depletive effect of the Cities’ ground water withdrawals on the Snake River at such time and place necessary to satisfy the SWC’s senior priority water rights.
6. The Mitigation Plan contains no “contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable” and therefore violates Rule 43.03.c.
7. The Mitigation Plan does not identify how injury to the SWC’s right to reasonable carryover storage will be addressed.

8. In general, the Mitigation Plan is vague and ambiguous, does not provide for adequate mitigation, provides no certainty that the mitigation water will be delivered to prevent injury, does not provide a reliable source of replacement water, could result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge and otherwise fails to adequately mitigate for injury caused by the Cities' junior priority ground water rights.

9. For such other and further reasons as may be discovered or offered at the hearing on this matter.

DATED this 7<sup>th</sup> day of July, 2015.

**BARKER ROSHOLT & SIMPSON LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of July, 2015, I served a true and correct copy of the foregoing **SURFACE WATER COALITION'S JOINT PROTEST** by email and by depositing same in the United States mail, postage prepaid, addressed to the following:

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