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Recharge District and the Thomas M. O'Gara
Family Trust*

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

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 37-22682 & 37-22852 in the
name of Innovative Mitigation Solutions, LLC

**REPLY IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

COME NOW, Protestants, the THOMAS M. O'GARA FAMILY TRUST and LOWER SNAKE RIVER AQUIFER RECHARGE DISTRICT, by and through counsel of record, and submit this reply in support of their *Motion for Summary Judgment* seeking dismissal of the applications for permit as a matter of law pursuant to the Idaho Department of Water Resources' ("IDWR) Rules of Procedure (IDAPA 37.01.01 *et seq.*) and I.R.C.P. 56(c).

The Protestants hereby withdraw their request for oral argument and submit this matter to the Hearing Office for decision on the briefing.

IDWR Rule of Procedure 565 mandates that any response to a motion be submitted within 14-days of the filing of the motion. On April 30, 2015, the Applications filed a pleading entitled *Application's Response to Motion for Summary Judgment*. Although entitled a "response," the pleading does not actually respond to merits of the arguments made in the Motion for Summary Judgment. Rather, the Applicant only raises three issues that have no bearing on the pending motion. For example, the fact that only "two of the more than twenty

Protestants” filed the motion does not alter the law on this matter.¹ To the contrary, the Applicant’s legal mandates are clear. As explained in the Protestants’ motion, the Applicant has failed to meet its burden and, as such, the law demands that these applications be dismissed.

The Protestant further complains that the “timing of this motion is inopportune” and that a “Summary Judgment process at this time might not avoid the need for a Hearing in these two Protestants do not prevail.” *Resp.* at 1. The scheduling order in this matter did not establish a time frame for filing motions for summary judgment. This motion was filed with sufficient time for the Hearing Officer to enter an order prior to hearing. Indeed, since the Applicant has not provided any evidence to dispute the arguments in the motion, the motion should be granted in short order.

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party’s pleadings, but the party’s response, by affidavits or as otherwise proceed in this rule, must set forth specific facts showing that there is a genuine issue for trial. ***If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.***

I.R.C.P. 56(e); *see also Ambrose v. Buhl Joint School Dist. No. 412*, 126 Idaho 581, 585 (Ct. App. 1994) (“The party opposing the motion may not merely rest on the allegations contained in the pleadings; rather, evidence by way of affidavit or deposition must be produced to contradict the assertions of the moving party”).

By failing to respond to any of the Protestants’ arguments, the Applicant has waived its ability to now argue any genuine issue on the matter. Accordingly, no hearing is necessary on the motion and the matter can be submitted for decision on the briefing.

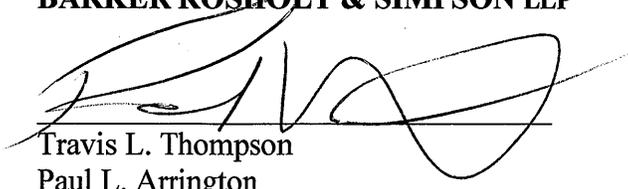
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¹ Furthermore, the Big Wood Canal Company joined in the motion.

DATED this 5th day of May, 2015.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'T. L. Thompson', is written over a horizontal line. The signature is stylized and somewhat cursive.

Travis L. Thompson
Paul L. Arrington

*Attorneys for Lower Snake River Aquifer Recharge
District, et al.*

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2015, I served a true and correct copy of the foregoing, via email to the following:

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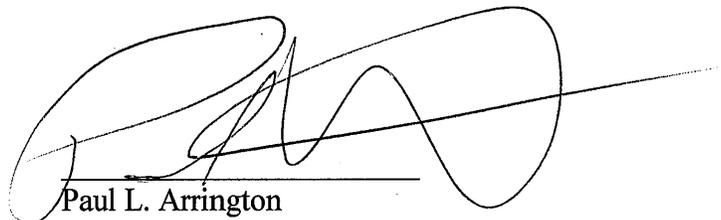
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