

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Heart Rock Ranch, Golden Eagle HOA, Rinker Co., Spencer Eccles, Lower Snake River Aquifer 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

MOTION TO COMPEL

COME NOW, Protestants, the THOMAS M. O’GARA FAMILY TRUST and LOWER SNAKE RIVER AQUIFER RECHARGE DISTRICT, by and through counsel of record, and move the Hearing Officer for an order compelling the Applicant to disclose financial information.

Idaho Code § 42-203A(5) governs these proceedings and provides that the Director must consider whether the applicant has “sufficient financial resources with which to complete the work involved” to accomplish the anticipated beneficial use. Speaking to this obligation, the water appropriation rules provide:

c. The following information ***shall be submitted*** for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water.

...

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code ***shall be submitted as follows***:

i. The applicant ***shall submit*** a current financial statement certified to show the accuracy of the information contained therein, or a financial

commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.

ii. The applicant ***shall submit*** plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.

IDAPA 37.03.08.040.05 (emphasis added). As these rules make plain, the Applicant must disclose this information and bears the burden of establishing that it has sufficient financial resources.

In an effort to discover whether the Applicant can meet this Burden, the Protestants served discovery requests on the Applicant seeking “all financial statements of the Applicant.” *2nd Arrington Aff.* at Ex. A. Rather than provide any financial information, the Applicant stated that “Financial statement will be made available confidentially to the Hearing Office at the time of hearing.” *Id.*

The rules do not allow the applicant to hide information necessary to establish the elements of section 42-203A. The Protestants have a right to view any information that the Applicant believes will support the applications – particularly if the Applicant intends to rely on that information at hearing. Any information not provided to the parties beforehand cannot be used at hearing.

Accordingly, the Hearing Officer should issue an order compelling the disclosure of financial information supporting the Applicant’s burden of showing that it has “sufficient financial resources with which to complete the work involved” to accomplish the anticipated beneficial use.

///

DATED this 11th day of May, 2015.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in blue ink, appearing to be "Travis L. Thompson", is written over a horizontal line.

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 11th day of May, 2015, I served a true and correct copy of the foregoing, via email to the following:

Idaho Department of Water Resources
650 Addison Ave. W., Ste. 500
Twin Falls, Idaho 83301

Innovative Mitigation Solutions
2918 N. El Rancho Pl.
Boise, Idaho 83704

Frank Erwin
711 East Ave. N.
Hagerman, Idaho 83332

Idaho Rivers United
Kevin Lewis, Conservation Director
P.O. Box 633
Boise, Idaho 83701

Peter Trust, LP
Thomas A. Thomas, General Partner
P.O. Box 642
Sun Valley, Idaho 83353

Wood River Land Trust
Attn: Patti Lousen
119 E. Bullion St.
Hailey, Idaho 83333

Trout Unlimited, Inc.
Peter R. Anderson
910 W. Main St., Suite 342
Boise, Idaho 83702

Harriet Hensley
Office of Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

Bureau of Land Management
Idaho State Office
Attn: Fred Price
1387 South Vinnell Way
Boise, Idaho 83709-1657

Michael Lawrence
Givens Pursley LLP
Representative for Redstone Partners, LP
P.O. Box 2720
Boise, Idaho 83701-2720

Peter L. Sturdivant
P.O. Box 968
Hailey, Idaho 83333

Valley Club Owners Association
Jack Levin, President
P.O. Box 6733
Ketchum, Idaho 83340

Idaho Conservation League
c/o Bryan Hulbutt, attorney
Advocates for the West
P.O. Box 1612
Boise, Idaho 83701

Board of Blaine County Commissioners
Lawrence Schoen, Commissioner
206 First Ave. South, Suite 300
Hailey, Idaho 83333

Lane Ranch Homeowners Association
c/o Sun Country Management
Marc E. Reinemann
P.O. Box 1675
Sun Valley, Idaho 83353

USDA Forest Service
Attn: Steve Spencer
1805 Hwy 16, Rm 5
Emmett, Idaho 83617

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

Redstone Partners LP
1188 Eagle Vista Ct.
Reno, Nevada 89511

The Valley Club, Inc.
c/o Givens Pursley, LLP
Attn: Michael Creamer
P.O. Box 2720
Boise, Idaho 83701-2720

Western Watersheds Project
Jon Marvel, Executive Director
P.O. Box 1770
Hailey, Idaho 83333

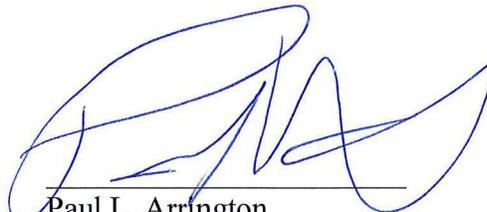
Brad Walker
Walker Sand & Gravel, Ltd. Co.
P.O. Box 400
Bellevue, Idaho 83313

Idaho Dept. of Fish & Game
Magic Valley Region
324 S. 417 E., Ste. 1
Jerome, Idaho 83338

Big Wood Canal Company
c/o Craig Hobdey
P.O. Box 176
Gooding, Idaho 83330

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

City of Hailey
c/o Givens Pursley LLP
Attn: Michael Creamer
P.O. Box 2720
Boise, Idaho 83701-2720



Paul L. Arrington