

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

<b>IN THE MATTER OF APPLICATIONS )</b>	
<b>FOR PERMIT NO. 37-22682 AND )</b>	
<b>37-22852 IN THE NAME OF: )</b>	<b>ORDER GRANTING MOTION</b>
<b>INNOVATIVE MITIGATION )</b>	<b>TO COMPEL</b>
<b><u>SOLUTIONS LLC</u> )</b>	

**BACKGROUND**

On January 30, 2015, the Applicant in this matter, Innovative Mitigation Solutions LLC, filed with the Idaho Department of Water Resources (“Department”) *Responses to Protestants’ First Discovery Requests*. In response to an interrogatory requesting production of all financial statements, the Applicant stated: “Financial statements will be made available confidentially to the Hearing Officer at the time of hearing.” See *Second Affidavit of Paul L. Arrington* at 7-8.

On May 11, 2015, Thomas M. O’Gara Family Trust and Lower Snake River Aquifer Recharge District (“Protestants”) filed a *Motion to Compel*. Protestants requested that the Hearing Officer issue an order compelling the Applicant to disclose “financial information supporting the Applicant’s burden of showing it has ‘sufficient financial resources to complete the work involved’ to accomplish the anticipated beneficial use.” *Motion to Compel* at 2. The Applicant timely filed *Applicant’s Response to Motion to Compel* (“Response”) on May 18, 2015.

**APPLICABLE STATUTE AND RULES**

Idaho Code § 42-203A(5) states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such. . . (d) that the applicant has not sufficient financial resources with which to complete the work involved therein . . . the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

The applicant bears the burden of proof regarding all factors set forth in Idaho Code § 42-203A(5). IDAPA 37.03.08.040.04.

The Department's Water Appropriation Rules state:

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.

## ANALYSIS

The Applicant asserts the Hearing Officer should deny the Protestants' *Motion to Compel* because "[t]he Applicant intends to submit the required information in the hearing that has been set to be held starting June 8, 2015, three weeks hence." *Response* at 2. In support of the idea that the Applicant does not need to submit the required financial information until hearing, the Applicant relies on Rule 45.01.d.i of the Department's Water Appropriation Rules, which lists criteria for determining whether the applicant has sufficient financial resources to complete the project, including that:

An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director. *This showing is required as described in Subsection 040.05.c or at the time the hearing provided by Subsection 040.05.c is conducted.*

IDAPA 37.03.08.045.01.d.i (emphasis added). Rule 40.05.c explains the Hearing Officer "may specifically request submittal of any of the following information for any filing, as he determines necessary." IDAPA 37.03.08.040.05.c. Accordingly, if the Hearing Officer determines information relative to financial resources as described in Rule 40.05.f is necessary prior to the time set for hearing, the Hearing Officer may request submittal of that information.

As described above, the Applicant bears the burden of proof regarding whether the Applicant has sufficient financial resources with which to complete the proposed

project. IDAPA 37.03.08.040.04. Failure to supply information relative to financial resources as described in Rule 40.05.f of the Department's Water Appropriation Rules to the Department and parties to this matter prior to the time set for hearing will result in delay and inefficiency at the hearing. The Hearing Officer concludes it is necessary for the Applicant to disclose such information to the Department and parties prior to the time set for hearing.

**ORDER**

Based upon and consistent with the foregoing, it is HEREBY ORDERED that Protestants' *Motion to Compel* is GRANTED.

IT IS FURTHER ORDERED that the Applicant, Innovative Mitigation Solutions must disclose information relative to financial resources as described in Rule 40.05.f of the Department's Water Appropriation Rules to the Department and parties to this matter on or before **May 26, 2015**. If the Applicant fails to disclose information as ordered, the Hearing Officer will proceed pursuant to Rule 700 of the Department's Rules of Procedure.

Dated this 21 day of May 2015



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Mathew Weaver  
Hearing Officer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>ST</sup> day of May 2015, true and correct copies of the document(s) described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

### Document Served: ORDER GRANTING MOTION TO COMPEL

Innovative Mitigation Solutions  
2918 N El Rancho Pl  
Boise, ID 83704

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

Trout Unlimited Inc.  
Attn: Peter Anderson  
910 W Main St, Suite 342  
Boise, ID 83702

Idaho Conservation League  
C/O Marie Callaway Kellner  
PO Box 844  
Boise, ID 83701

Blaine County Commissioners  
Attn: Larry Schoen  
206 1<sup>st</sup> Ave South, Suite 300  
Hailey, ID 83333

Western Watersheds Project  
Attn: Jon Marvel  
PO Box 1770  
Hailey, ID 83333

Lane Ranch H.O.A.  
Golden Eagle H.O.A.  
c/o Sun Country Mgmt  
PO Box 1675  
Sun Valley, ID 83353

Walker Sand & Gravel Ltd. Co.  
Attn: Brad Walker  
PO Box 400  
Bellevue, ID 83313

Heart Rock Ranch LLC  
PO Box 3724  
Hailey, ID 83333

Peter Trust LP  
2300 W Sahara Ave, Ste 530  
Las Vegas, NV 89102

Frank Erwin  
711 East Ave N  
Hagerman, ID 83332

Peter Trust LP  
PO Box 642  
Sun Valley, ID 83353

Harry S Rinker  
PO Box 7250  
Newport Beach, CA 92658

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

Idaho Rivers United  
Attn: Kevin Lewis  
PO Box 633  
Boise, ID 83701

Redstone Partners LP  
c/o Steve Beevers  
1188 Eagle Vista Ct  
Reno, NV 89511

Peter L Sturdivant  
PO Box 968  
Hailey, ID 83333-0968

Eccles Flying Hat Ranch LLC  
Eccles Window Rock Ranch  
PO Box 3028  
Salt Lake City, UT 84110

Big Wood Canal Company  
c/o Craig Hobdey  
PO Box 176  
Gooding, ID 83330

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

The Valley Club, Inc.  
City of Hailey  
c/o Givens Pursley LLP  
Attn: Michael Creamer  
PO Box 2720  
Boise, ID 83701-2720

Office of the Attorney General  
Attn: W. Dallas Burkhalter  
PO Box 25  
Boise, ID 83707

Dry Lot, LLC  
Lower Snake River Aquifer  
Recharge District  
Thomas M. O'Gara Family Trust  
c/o Barker Rosholt & Simpson  
Attn: Travis Thompson  
195 River Vista Pl, Ste 204  
Twin Falls, ID 83301

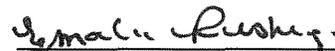
Bureau of Land Management  
Attn: Fred Price  
1387 S Vinnell Way  
Boise, ID 83709-1657

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

Office of the Attorney General  
Attn: Harriet Hensley  
PO Box 83720  
Boise, ID 83720-0010

Steve Spencer  
US Forest Service  
161 E. Mallard, Suite A  
Boise, ID 83702

Pepin Corso-Harris  
11 Purple Sage Lane  
Bellevue, ID 83313



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Emalee Rushing  
Administrative Assistant