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DEPARTMENT OF  
WATER RESOURCES

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Attorneys for City of Pocatello, Basic American  
Foods, and ConAgra/Lamb Weston

**BEFORE THE DIRECTOR  
OF 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 )  
\_\_\_\_\_ )**

**NOTICE OF PROTEST**

**Name of Protestants:** City of Pocatello, Basic American Foods, and ConAgra/Lamb Weston

**Protestants' Representative** Josephine P. Beeman  
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**Basis of protest (including statement of facts and law upon which the protest is based):**

The City of Pocatello, Basic American Foods and ConAgra/Lamb Weston are ground water and surface water users in Water District 120. The City of Pocatello, Basic American Foods, and ConAgra/Lamb Weston were parties to the Interim Stipulated Agreement for Processors and Municipalities within and near IDWR Administrative Basins 35 and 36 (Processors/Cities Interim Agreement), effective from October 11, 2001 through December 31, 2003, which operated in Water Districts 120 and 130; and then were parties to the Processors/Cities Interim Agreement, effective through December 31, 2004, which operated in Water District 120. The Processors/Cities Interim Agreement is being incorporated into a mitigation plan that will be filed before the hearing on the Mitigation Plan for the American Falls reach of the Snake River (Mitigation Plan) which was filed February 8, 2005 by the American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Madison Ground Water District, South West Ground Water District, North Snake Ground Water District and Magic Valley Ground Water District (the Ground Water Districts).

The Idaho Department of Water Resources (IDWR) proceeding on the Ground Water Districts Mitigation Plan implicates the review and approval of any mitigation plan for the City of Pocatello, Basic American Foods, and ConAgra/Lamb Weston. The right of the City of Pocatello, Basic American Foods, and ConAgra/Lamb Weston to continue ground water and surface water diversions, and the procedural and legal protections afforded them by the Conjunctive Management Rules and future review, approval and administration of mitigation plans in Water Districts 120 and 130 and elsewhere, may be directly and substantially affected by IDWR's process and final order approving the Ground Water Districts Mitigation Plan, and any subsequent exception, reconsideration, or judicial review of IDWR's decision.

This protest is for the purpose of confirming that applicable factual and legal standards are addressed in the processing of the Ground Water Districts Mitigation Plan. Written comments about such standards already exist in IDWR's public file for Water

District 120 and Water District 130.<sup>1</sup> These standards include use of the best evidence available as regards actual water right rates (cumulative), priority dates (cumulative), and measured use for ground water and surface water rights in Water District 120 and Water District 130. Such facts include spring and surface water right limitations arising from subordination provisions, self-limiting provisions, combined diversion limits, re-use issues, and diversion capacity limitations.

In addition, appropriate consideration needs to be given to depletions to the American Falls reach (from surface water transfers, changes in surface water irrigation, or ground water withdrawals outside of Water District 120) which cannot be attributed to ground water withdrawals in Water District 120.

To the extent applicable, essential components of the legal framework that must be utilized and accounted for in administering water rights and evaluating mitigation plans within the Eastern Snake Plain Aquifer, Water District 120 specifically, and the broader Swan Falls drainage are as follows: the Swan Falls Agreement, the Swan Falls Contract, the Swan Falls consent judgments, State Water Plans adopted by the legislature, and other appropriate contractual instruments, decrees, and related documents already in the public record for Water District 120.

### **What would resolve your protest?**

The City of Pocatello, Basic American Foods, and ConAgra/Lamb Weston want to confirm that the proceedings and decisions related to the Ground Water Districts Mitigation Plan are based on the applicable factual and legal standards of the conjunctive management rules, the prior appropriation doctrine, and IDWR's authority under Idaho Code Title 42, Chapter 6, and other applicable law.

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<sup>1</sup> Water District 120 encompasses American Falls-Aberdeen Ground Water District, Bingham Ground Water District, and Bonneville-Jefferson Ground Water District. Water District 130 encompasses both North Snake Ground Water District and Magic Valley Ground Water District.

I hereby acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the Department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 21st day of March 2005.

By Josephine P. Beeman  
Josephine P. Beeman  
Attorney for Protestants City of Pocatello,  
Basic American Foods, and ConAgra/Lamb Weston

Service made upon the applicant Ground Water Districts at the following address:

Jeffrey C. Fereday  
Michael C. Creamer  
Givens Pursley, LLP  
601 West Bannock Street  
P. O. Box 2720  
Boise, ID 83701-2720

Service is also made on the following protestants at the following addresses:

None.

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\$25.00 fee Received by: \_\_\_\_\_ # \_\_\_\_\_ Date \_\_\_\_\_