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Attorneys for Salubria Holdings LLC

RECEIVED
JAN 25 2022
DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF THE APPLICATION
FOR TRANSFER NO. 84698 IN THE NAME
OF MARION OGLE

**SALUBRIA'S AMENDED AND
RESTATED NOTICE OF PROTEST**

Protestant Salubria Holdings LLC ("Salubria" or "Protestant"), by and through its counsel of record Givens Pursley LLP, and pursuant to Department Rule of Procedure 305, IDAPA 37.01.01.305, hereby submits this Amended and Restated Notice of Protest to clarify the grounds upon which it is protesting Application for Transfer No. 84698 (the "*Application*").

Salubria filed its original Notice of Protest ("*Original Protest*") to the *Application* on July 2, 2021. A copy of the *Original Protest* is attached hereto as Exhibit A, and is incorporated herein by this reference.

For purposes of clarifying the issues to be addressed at the hearing scheduled in this matter, Salubria hereby amends its *Original Protest* as follows:

1. Salubria does not contend that the *Application* if approved will injure Salubria's water right nos. 67-14643, 67-14645, 67-14647, or 67-10208.
2. Salubria contends that the water rights subject to the *Application* are forfeited and have not been validly resumed, that the *Application* if approved will result in the enlargement of the subject water rights, that water rights other than Salubria's will be injured if the *Application*

is approved, that the new use proposed by the *Application* will not be a beneficial use because the land proposed to be irrigated already has irrigation water rights, that the change proposed in the *Application* is not in the “local public interest” as defined in Idaho Code 42-202B because water is scarce in this area and other users rely on the water that has not been used (i.e. that has been forfeited) under water right nos. 67-250 and 67-301, and that the applicant has not demonstrated that it has authority to transfer the subject water rights to the proposed place of use.

3. Salubria’s contentions in its *Original Protest* are not modified except as expressly set forth herein.

Respectfully submitted this 25th day of January, 2022.

GIVENS PURSLEY LLP



By _____
Charlie S. Baser



By _____
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of January, 2022, the foregoing was filed and served as follows:

DOCUMENT FILED:

IDAHO DEPARTMENT OF WATER
RESOURCES
Water Management Division
322 E Front St
PO Box 83720
Boise, ID 83720-0098

☐	U. S. Mail
☒	Hand Delivered
☐	Overnight Mail
☐	Facsimile
☐	E-mail

SERVICE COPIES TO:

Marion Ogle
c/o Dana Hofstetter
Hawley Troxell Ennis & Hawley
877 Main St., Ste. 1000
PO Box 1617
Boise, ID 83701-1617
Email: DHofstetter@hawleytroxell.com

☐	U. S. Mail
☐	Hand Delivered
☐	Overnight Mail
☐	Facsimile
☒	E-mail



Charlie S. Baser

EXHIBIT A

07/2008

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

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JUL 02 2021

WATER RESOURCES
WESTERN REGION

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application for Transfer No. 84698 in the name of MARION OGLE
2. Name of protestant Salubria Holdings LLC
3. Protestant's Representative for service (If different than protestant)
Michael P. Lawrence and Charlie S. Baser of Givens Pursley LLP
4. Service mailing address 601 W. Bannock St., Boise, Idaho 83702
mpl@givenspursley.com; csb@givenspursley.com;
5. Service telephone no. (208) 388-1200 Email Address: rfereday@mayhardware.com
6. Basis of protest (including statement of facts and law upon which the protest is based)

The Application does not conform to applicable statutes, regulations, or guidance, and does not satisfy the criteria for approval set forth in Idaho Code Section 42-222. Protestant is particularly concerned with the validity of the water rights proposed for transfer. Protestant reserves the right to identify additional questions / concerns as further information becomes available.

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? _____

Based on currently known information, a demonstration that the subject water rights have not been abandoned or forfeited, and that the proposed diversion and use will not injure other water rights. Protestant reserves the right to identify other potential resolutions as further information becomes available.

I hereby, acknowledge that if I, or my designated representative, fails 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 2nd day of July, 20 21.

Protestant



Protestant's Representative

NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
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FOR DEPARTMENT USE ONLY

Received by LE Date 07/02/2021 Time 12:15pm
\$25.00 fee Received by LE # W049549 Date 07/02/2021