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WATER RESOURCES
WESTERN REGION

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DEPARTMENT OF
WATER RESOURCES

Scott L. Campbell, ISB No. 2251
Campbell Law, Chartered
Post Office Box 170538
Boise, Idaho 83717
Telephone: (208) 949-0599
scott@slclexh2o.com

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WATER RESOURCES
WESTERN REGION

Dylan B. Lawrence, ISB No. 7136
Varin Wardwell LLC
242 N. 8th Street, Suite 220
P.O. Box 1676
Boise, Idaho 83701-1676
Telephone: (208) 922-7060
Facsimile: (866) 717-1758
dylanlawrence@varinwardwell.com

Attorneys for Protestant Elmore County, Board of County Commissioners

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 63-34891)

In the name of Boise Project Board of Control)

AMENDED NOTICE OF PROTEST

_____))
_____))
_____))
_____))
Name and address of protestant and matter being protested: The Elmore County
Board of County Commissioners ("Elmore County"), through undersigned counsel of
record, hereby files this Amended Notice of Protest to Application for Permit No.
63-34891 (the "Application"), filed by the Boise Project Board of Control (the
"Applicant"), pursuant to Idaho Code Section 42-203A(4) and IDWR Rules of Procedure
210, 250, and 305. Elmore County's mailing address is 150 S. 4th East, Mountain Home,

Idaho 83647. The \$25 protest fee was submitted with its original Notice of Protest, filed June 3, 2020.

Protestant's representative and service: Elmore County's representatives for service in this matter shall be counsel of record identified in the heading of this Notice.

Basis of protest: Elmore County holds Permit No. 63-34348 for water appropriation within Basin 63. At this early stage of the proceedings, and without yet having had the opportunity to conduct discovery, the County is concerned the Application seeks a water permit that would eventually interfere with the development and ultimate exercise of Permit No. 63-34348. Unless acceptable conditions are included in any permit issued, the Application would therefore "reduce the quantity of water under existing water rights," pursuant to Idaho Code Section 42-203A(5)(a), and would be contrary to the statutory admonition of Idaho Code Section 42-101: "Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved."

Moreover, the Application does not adequately describe how the existing infrastructure at Arrowrock Dam can be used to put the requested water to beneficial use or explain why additional flow is required in light of the very recent licensing of Water License No. 63-10240 for 1,680 cfs. Consequently, as presently constituted, the Application is "speculative" pursuant to Idaho Code Section 42-203A(5)(c).

Further, given the source of water originates in Elmore County, if appropriate conditions are not included in any permit, the water appropriated would "adversely affect

the local economy of the...local area within which the source of water for the proposed use originates, pursuant to Idaho Code Section 42-203A(5)(g).

Consequently, the Application does not satisfy the requirements of, or is contrary to, Idaho Code Sections 42-101, 42-104, 42-106, 42-110, 42-201, 42-203A, and Article XV, Section 3 of the Idaho Constitution, and should not be granted without appropriate conditions.

What would resolve this Protest: If conditions addressing and reflecting the above bases of protest are included in any permit, Elmore County would support action by the Director granting the permit.

DATED THIS 10th day of August, 2020.

Varin Wardwell LLC

By: Dylan Lawrence
Dylan B. Lawrence
Attorneys for Elmore County, Board of
County Commissioners

Campbell Law Chtd.

By: Dylan Lawrence for
Scott L. Campbell
Attorneys for Elmore County, Board of
County Commissioners

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2020, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Original:

Idaho Department of Water Resources
322 E. Front Street
Boise, Idaho 83702

☐ U.S. Mail
☐ Overnight Mail
☒ Hand Delivery
☐ Fax
☐ Email

With copies to:

Albert P. Barker
Barker Rosholt & Simpson LLP
1010 W. Jefferson St., Ste. 102
P.O. Bo 2139
Boise, Idaho 83701-2139

☒ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax
☒ Email

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Campbell Law, Chartered
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