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Department of Water Resources
Eastern Region

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Declo, Dietrich, Gooding, Hazelton,
Heyburn, Jerome, Paul, Richfield, Rupert,
Shoshone and Wendell*

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

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 36-17121 and 36-17122

In the name of Buckeye Farms, Inc.

**CITIES' RESPONSE TO IGWA's
MOTION TO INTERVENE**

Fee Category: Exempt
Idaho Code § 67-2301

The City of Pocatello and the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (collectively, the "Cities") submit this Response to IGWA's Motion to Intervene in order to clarify the issues raised by the Cities' protests collectively. The Cities do not object to IGWA's participation, based on upon IGWA's representations that it seeks to protect how its settlement by protecting how "its mitigation credits are applied."

Currently Buckeye is proposing annual, after-the-fact accounting of the delivery of its mitigation credits. To the extent that the mitigation credits were *not* adequate in a given year to avoid injury to vested water rights (or exceedances of the Swan Falls minimum flows), and

vested water rights senior to Buckeye are at risk of curtailment because of Buckeye's junior depletions to the system, Buckeye's proposed after-the-fact accounting is wholly insufficient.

To prevent this problem, the Cities have proposed that Buckeye engage in an annual pre-irrigation season projection of its water use to demonstrate in advance of the irrigation season that their mitigation supplies are adequate. Then, to demonstrate at the end of the season that the mitigation supplies were in fact adequate, Buckeye would submit an annual report that details monthly depletions by comparison with monthly available replacement supplies.

In addition, the mitigation supplies would be dedicated to compensate for Buckeye's depletions to the river rather than be committed to more than one mitigation effort.

The Cities understand from reviewing IGWA's settlement with Buckeye that the parties conditioned the validity of the settlement on Buckeye obtaining the sought-after permits. However, the Cities' objections to the Buckeye plan will not interfere with Buckeye obtaining the new permits so long as Buckeye (not IGWA) can demonstrate it will operate in a manner that will not injure existing water rights.

Respectfully submitted this 6th day of January 2020.

SOMACH SIMMONS & DUNN

By 

Sarah A. Klahn

McHUGH BROMLEY, PLLC

By 

Christopher M. Bromley

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2020, I caused to be served a true and correct copy of the foregoing **CITIES' RESPONSE TO IGWA's MOTION TO INTERVENE**, by hand-delivering, emailing, or depositing same in the U.S. Mail, postage prepaid, as indicated and addressed to the following:



Sarah Klahn
Somach Simmons & Dunn

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