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Department of Water Resources

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Attorneys for Ground Water Users

BEFORE THE DIRECTOR
OF THE
IDAHO DEPARTMENT OF WATER RESOURCES

In Re: Canal Companies' and Clear
Springs' Petitions for Establishment of
Ground Water Management Areas in
Water Basins 35 and 36

**GROUND WATER USERS'
RESPONSE TO SURFACE WATER
USERS' PETITIONS TO ESTABLISH
GROUND WATER MANAGEMENT
AREAS**

Respondents Idaho Ground Water Appropriators, Inc.; Jerome Cheese Company, Inc., a division of Davisco Foods International, Inc.; Milk Producers of Idaho, Inc.; Unit Three Water Users Association; Aberdeen-American Falls Ground Water District; and Bingham Ground Water District (collectively, the "Ground Water Users" or "Respondents"), through their counsel, Givens Pursley LLP, hereby respond to the petitions for designation of ground water management areas filed with the Director of the Department of Water Resources (the "Director") on or about July 16, 2001 by the North Side Canal Company, the Twin Falls Canal Company, and Clear Springs Foods, Inc. (collectively, "Petitioners").

The Ground Water Users hold ground water rights, or represent individuals and entities holding ground water rights, which could be adversely affected by the designation of any ground

water management area in water Basins 35 and 36.

Respondent Idaho Ground Water Appropriators, Inc. (“IGWA”) is an organization comprised of several ground water districts, an irrigation district of ground water users, a large municipal water provider, and a large industry which is dependent upon ground water pumping for irrigation and other uses in the areas affected by the Petitions.

Respondent Jerome Cheese Company, a division of Davisco Foods International, Inc. (“Jerome Cheese”), owns and operates a large cheese factory and related facilities (including a large tract of land irrigated with ground water) within Basin 36, one of the areas which the Petitioners seek to have designated as a ground water management area. Jerome Cheese processes over 5 million pounds of milk per day, employs approximately 150 individuals full-time, and has an annual payroll of about \$4 million.

Respondent Aberdeen-American Falls Ground Water District (which also is a member of IGWA) represents about 975 ground water rights serving irrigation, commercial and other uses, including some 198,000 acres of farmland in the southern portion of Basin 35, one of the basins which the Petition seeks to designate.

Respondent Bingham Ground Water District represents about 770 ground water pumpers, whose uses include irrigation, commercial and other uses, including some 125,500 acres of farmland in the northern portion of Basin 35, one of the basins which the Petition seeks to designate.

Respondent Milk Producers of Idaho, Inc., is an Idaho non-profit corporation whose members include some 84 dairies, many of which would be directly affected by the designations sought in the Petitions.

Respondent Unit Three Water Users Association, an unincorporated association,

operates two municipal or community ground water wells that provide water for approximately 86 homes in an area in Basin 36 north of Twin Falls.

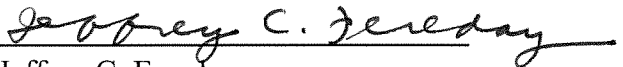
In responding to the Petitions, the Ground Water Users state as follows:

1. The Petitioners' real aim appears to be to implement a delivery call, including potential shut-offs of wells, against all or some ground water users within Basins 35 and 36, including Respondents or those whom Respondents represents. The law authorizing the establishment of ground water management areas, or the adoption of a ground water management plan, does not contemplate or allow the use of a ground water management area designation for purposes of implementing a delivery call for conjunctive management. Such an action can be brought only under the Department's Conjunctive Management Rules, IDAPA 37.03.11.30.
2. The ground water management area statute, I.C. § 42-233b, does not authorize curtailment of ground water users for the benefit of surface water users.
3. The ground water management statute cannot be used as a substitute for existing conjunctive management authorities, including those in the Department's own rules.
4. Idaho Code § 42-233b authorizes the designation of ground water management areas only in situations where ground water levels are shown to be in decline, which is not the situation here.
5. The Ground Water Users request, and expect, a full hearing on the Petitions pursuant to the Department's contested case rules and the Conjunctive Management Rules, IDAPA 37.03.11.30.06 and 07. The Ground Water Users separately have filed a motion seeking an order authorizing discovery in this case.
6. The Ground Water Users reserve the right to raise additional grounds in response to the

Petitions as facts are discovered or as further pleadings are filed that may raise additional issues.

Respectfully submitted this 10th day of August, 2001.

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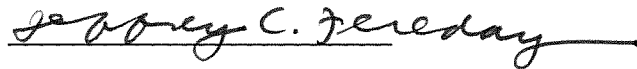
Attorneys for Ground Water Users

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2001, I caused to be served by U.S. Mail a true and correct copy of the foregoing to each of the persons on the service list specified below.

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Handwritten signature of Jeffrey C. Fereday in cursive script, underlined.