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Apr 20, 2026

DEPARTMENT OF  
WATER RESOURCES

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STATE OF IDAHO  
IDAHO DEPARTMENT OF RESOURCES

Water Rights of Jerry D. Bingham and )  
Valerie H. Bingham, )  
1675 W 400 N )  
Blackfoot, ID 83221-5051 )  
)  
Water Rights No: 35-12226, 35-2202B, )  
35-2205E, 35-2266, 35-2269G, and )  
35-2186D, )  
)  
\_\_\_\_\_ )

Docket No. CM-MP-2025-003

**BINGHAMS' MOTION FOR STAY OF  
ORDER OF CURTAILMENT**

COME NOW Jerry D. Bingham and Valerie H. Bingham, by and through the undersigned counsel, and pursuant to Rule 780 of the Conjunctive Management Rules, Rule 84(m) of the Idaho Rules of Civil Procedure, and Idaho Code § 67-5274, Bingham seek a stay of the order of curtailment under the SWC Delivery Call, Docket No. CM-DC-2010-001, until such time as the Bingham's mitigation plan is processed, for the following reasons:

**LEGAL STANDARD FOR A STAY**

The Director has authority to stay a final order pursuant to the Department's rules of procedure:

Any party may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion.

IDAPA 37.01.01.780.

The authority to stay a final order is also reflected in Idaho Code § 67-5274 and I.R.C.P. 84(m), which provide that an "agency may grant, or the reviewing court may order, a stay upon appropriate terms." The use of the word "may" demonstrates the court's discretionary authority to stay enforcement of an order. See *Bank of Idaho v. Nesselth*, 104 Idaho 842, 846, 664 P.2d 270, 274 (1983). Neither the statute nor the rule define what constitutes "appropriate terms" or establish a clear test for determining when a stay is appropriate, and there are no reported judicial opinions in Idaho discussing what qualifies as "appropriate terms" or that describe when a stay is appropriate pursuant to Rule 780, Idaho Code § 67-5274 or I.R.C.P. 84(m). As stated by Director Spackman in his February 21, 2014 Order Granting IGWA'S Petition to Stay Curtailment, IDWR Case No. CM-DC-2011-004, page 2, the Director must look to other authorities to help determine when a stay is appropriate. The Order goes on to state:

The authority of the Director to stay an order in an administrative proceeding is analogous to the authority of a district court to stay the enforcement of a judgment under I.R.C.P 62(a). In both circumstances, an order has been issued deciding the matter and a party can seek to have enforcement of the order stayed pending appeal or pending further action.

*Id.*

A stay pursuant to I.R.C.P 62(a) may be granted by a district court "when it would be unjust to permit the execution on the judgment, such as where there are equitable grounds for the stay or where certain other proceedings are pending." *Haley v. Clinton*, 123 Idaho 707, 709, 851 P.2d 1003,

1005 (Ct. App. 1993). Likewise, a stay is appropriate when, "[i]t is entirely possible that the refusal to grant a stay would injuriously affect appellant, and it likewise is apparent that granting such a stay will not be seriously injurious to respondent." *Id*

Based on the foregoing, the following factors should be considered when deciding whether a stay should be issued in this matter:

1. The likelihood the Bingham's will prevail on the pending proceeding;
2. Whether denial of the stay will result in irreparable harm to the moving party;
3. Whether granting the stay will cause irreparable harm.

### **ARGUMENT**

Since their initial filing of a proposed Mitigation and Curtailment Plan on August 19, 2025, the Bingham's have been trying in good faith to prepare a mitigation plan acceptable to IDWR. Bingham's attempts have been repeatedly denied, and any delays of the acceptance of a mitigation plan have not been caused by any bad conduct on Bingham's part.

Most recently, on March 25, 2026, after consulting with the SWC, the Bingham's submitted an Amended Mitigation and Curtailment Plan to the IDWR. However this mitigation plan was again denied by the Director in his Order Returning Amended Mitigation and Curtailment Plan, dated April 9, 2026, based on the determination that there was "an absence of a clear and detailed narrative [and] clear calculations[.]" *Id.*, at p. 3.

Bingham's are currently in the process of having a "clear and detailed" mitigation analysis prepared to fully satisfy the Director's issues with their March 25, 2026 Amended Mitigation and Curtailment Plan, and they intend to increase volume reduction to more fully address their mitigation obligations.

Binghams are working to secure water storage through the Minidoka Irrigation District, and they believe that this, coupled with additional volume reduction, will be sufficient to demonstrate that they have satisfied their mitigation obligations.

Denial of the Binghams' requested stay will result in irreparable harm. If the curtailment order is left in place, it will have significant negative and potentially irreversible effects on Binghams' irrigated farm land, and it is likely that they will suffer significant financial hardship.

However, granting Binghams' request to stay the curtailment order, until an agreement on the mitigation plan is reached, will not cause irreparable harm to the SWC, as any effect of the stay will be negligible if it only lasts until a decision is issued on the mitigation plan.

Given that Binghams have been working tirelessly since August, 2025 to present an acceptable mitigation plan to the IDWR, and because of the disproportional harm to the Binghams, when compared with the harm to the SWC if a temporary stay is granted, Binghams request that the Director approve a temporary stay pending a decision on their mitigation plan.

Respectfully submitted.

DATED this 20<sup>th</sup> day of April, 2026.

COOPER & LARSEN, CHARTERED

By /s/ Reed W. Larsen  
REED W. LARSEN  
*Attorney for Jerry D. Bingham and  
Valerie H. Bingham*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20<sup>th</sup> day of April, 2026, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

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