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May 28, 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)
35-2183D,)
)
_____)

Docket No. ~~CM-MP-2025-003~~
CM-MP-2026-004

**BINGHAMS' PETITION FOR
EXPEDITED HEARING AND
CONSIDERATION OF FIFTH
MITIGATION AND CURTAILMENT
PLAN AND FOR TEMPORARY STAY
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 an expedited hearing and consideration of their Fifth Mitigation and Curtailment Plan and 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 Fifth Mitigation and Curtailment plan is processed and, if necessary, published, 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. Nesseth*, 104 Idaho 842, 846, 664 P.2d 270, 274 (1983).

ARGUMENT

On May 14, 2026, Director Weaver issued an Order Denying Motion for Stay of Curtailment, citing as a primary reason for the denial the absence of a pending mitigation plan or demonstrated plan to prevent or resolve injury to water users senior to the Bingham.

Concurrently with this petition, the Bingham are submitting their proposed Fifth Mitigation and Curtailment Plan for consideration. The Fifth Mitigation and Curtailment Plan proposes that three of Bingham's six water rights (totaling 430 irrigated acres, or 41% of the Bingham's total annual water usage), be completely curtailed for the 2026 season.

Bingham have consulted with counsel for the Surface Water Coalition ("SWC") and formal approval by all of the members of the SWC is expected and pending.

Bingham's are facing irreparable harm if the curtailment order is left in place, it will have significant negative and potentially irreversible effects on Bingham's irrigated farm land, and it is certain that they will suffer significant financial hardship. For this reason they are petitioning the

IDWR to expedite the hearing and consideration of their proposed Fifth Mitigation and Curtailment Plan and grant a temporary stay of curtailment of three of Bingham's water rights, including Water Right #35-2202B (250 acres); Water Right #35-2205E (207 acres); and Water Right #35-2183D (156 acres).

If the IDWR determines it is necessary to publish Bingham's Fifth Mitigation and Curtailment Plan, Bingham also request a stay during that period.

Granting Bingham's request to stay the curtailment order, until decision 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.

Respectfully submitted.

DATED this 28th day of May, 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 28th day of May, 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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/s/ Reed W. Larsen