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DEPARTMENT OF
WATER RESOURCES

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Attorney for Jerry D. Bingham and Valerie H. Bingham

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION	)	Docket No. CM-DC-2010-001
OF WATER TO VARIOUS WATER	)	
RIGHTS HELD BY OR FOR THE	)	
BENEFIT OF A&B IRRIGATION	)	JERRY D. BINGHAM'S AND VALERIE
DISTRICT, AMERICAN FALLS	)	H. BINGHAM'S REQUEST FOR
RESERVOIR DISTRICT #2, BURLEY	)	HEARING
IRRIGATION DISTRICT, MILNER	)	
IRRIGATION DISTRICT, MINIDOKA	)	
IRRIGATION DISTRICT, NORTH SIDE	)	
CANAL COMPANY, AND TWIN FALLS	)	
CANAL COMPANY.	)	
_____	)	

COME NOW Jerry D. Bingham and Valerie H. Bingham (“Binghams”), by and through their counsel of record, and pursuant to the Notice of Opportunity for Hearing issued by Director Matthew Weaver on August 25, 2026, and Idaho Code § 42-1701A(5), request a hearing before the Idaho Department of Water Resources.

Binghams are affected by the IDWR’s current methodology contained in the Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover (“Sixth Methodology Order”), as well as the IDWR’s current and future curtailment orders that rely upon the Sixth Methodology Order, as they continue to move away from

priority administration and instead rely on a series of administrative and methodological calculations that produce unequal outcomes.

By this Request for Hearing, Bingham challenge whether the methodology behind the revisions to the Sixth Methodology Order properly allocate responsibilities in a manner that is consistent, priority based, and equitable. Specifically, Bingham assert that the Sixth Methodology Order is unlawful to the extent it substitutes proportionate share mitigation for priority based administration, and for this reason, the IDWR's subsequent orders are not legally valid in so far as they are based upon unlawful methodology.

The Idaho Supreme Court, in *Wernecke v. St. Maries Joint School District No. 401*, 147 Idaho 213, 207 P.3d 1008 (2009), stated that: “Orders by an administrative agency which authorize something prohibited by the statute are not merely erroneous, but are void.” *Id.*, 147 Idaho at 286; citing to *C.J.S. Public Administrative Law & Procedure § 122*. The Court further held that a void order may be subject to collateral attack. *Id.*

Accordingly, the Bingham contend that if the Sixth Methodology Order is legally invalid because it establishes a methodology that conflicts with the governing law of priority, then the IDWR may not rely upon that methodology as the foundation for subsequent orders or curtailment, and, to the extent such subsequent orders depend upon unlawful and void methodology, those orders are subject to challenge.

As currently implemented, the methodology implemented by the IDWR imposes disproportionate obligations on certain groundwater users, while similarly situated water users, are treated differently or excluded from comparable responsibility. As a result, certain users, including Bingham, bear a disproportionate share of the mitigation burden while other junior-priority diversions continue to operate without a commensurate obligation.

Priority within the Sixth Methodology Order appears to be recognized for some administrative purposes but disregarded when allocating IDS responsibility. Again, this raises a question of whether the methodology is consistent with the framework of the Idaho Constitution, Idaho statutes, and Conjunctive Management Rules requiring administration according to priority. IDWR cannot convert proportional mitigation allocation into a substitute for the priority administration required by law.

Further, the Director is apparently assigning mitigation responsibility among junior groundwater users through a proportionate-share methodology that, as applied, does not preserve the priority relationship between the affected water rights. By limiting responsibility to one category of users, the methodology creates a distinction between groundwater and surface-water rights that is not supported by the doctrine of prior appropriation. The Sixth Methodology Order, including the revisions outlined in the Director's Notice of Opportunity for Hearing Pursuant to Idaho Code § 42-1701A(5), focuses more on technical accounting than on the unequal treatment of similarly situated appropriators, potentially resulting in disproportionate allocations of responsibility and an inequitable burden on affected water users. By assigning IDS responsibility exclusively among groundwater users, the methodology departs from a priority-based administration framework and instead creates a categorical distinction between groundwater and surface-water rights not supported by governing law, including IDAPA 37.03.11, which provides for conjunctive management of surface and ground water resources; Idaho Code §§ 42-101 et. seq., which governs the use of any of the waters of the state to include both ground water and surface water; and Article XV of the Idaho Constitution.

Binghams reserve the right to identify additional issues as necessary in this proceeding.

As previously stated above, Bingham request a hearing pursuant to Idaho Code § 42-1701A(5).

Respectfully submitted.

DATED this 1st day of September, 2026.

COOPER & LARSEN, CHARTERED

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of September, 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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