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**Pro hac vice pending*

Attorneys for Petitioners

**DISTRICT COURT OF THE STATE OF IDAHO
SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY**

JERRY D. BINGHAM and VALERIE H.
BINGHAM,

Petitioners,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

Case No. CV06-26-1801

**DECLARATION OF JERRY D.
BINGHAM IN SUPPORT OF MOTION
TO STAY RESPONDENT'S FINAL
ORDER PENDING JUDICIAL
REVIEW**

I, Jerry D. Bingham, hereby declare as follows:

1. I am over the age of 18 and am competent to execute this declaration. I make this declaration based upon my personal knowledge of the facts stated herein, and I would testify to the same in court if called upon to do so.

2. I reside in Blackfoot, Bingham County. My wife and I own a farm of about 1,000 acres, on which we raise potatoes, wheat, and other crops. Started by my father from sagebrush, the farm is not only our legacy; it is a means of making a living for our five sons and their families.

3. My wife and I own the following water rights: September 5, 1950 (35-2183D), August 9, 1951 (35-2202B), November 9, 1951 (35-2205E), October 9, 1952 (35-2266), October 23, 1952 (35-2269G), and April 1, 1987 (35-12226). Except for the 1987 right, our water rights are among the most senior in the Eastern Snake River Plain aquifer.

4. Owing to curtailment orders issued by Respondent Idaho Department of Water Resources, I have been unable to pump any groundwater pursuant to the above-referenced water rights since July 2025, other than for a brief period in the spring of 2026. Currently, the Department has completely curtailed our water rights because they are junior to October 11, 1900, and because we do not have an approved mitigation plan.

5. Since last year, I have been diligently attempting to secure approval of a mitigation plan to avoid curtailment. Currently pending before the Department is my fifth proposed mitigation plan, which proposes an approximately 40% reduction in water usage. My previous four proposed mitigation plans have been rejected or superseded by subsequent proposals.

6. I have already suffered substantial financial losses since the Department's initial curtailment of our water rights in July 2025.

- a. For 2025 and 2026, I was unable to plant potatoes on our farm and had to rent land. I estimate that the lost revenue of not being able to plant and harvest potatoes on our own farm (because of added costs for rents) is approximately \$300,000.

- b. The curtailment also substantially limited the value of the wheat crop I harvested on the farm for 2026. I estimate that the lost revenue from not having adequate water for the wheat crop is approximately \$388,000.

7. If the Court does not stay the Department's continuing total curtailment of our water rights, I will suffer irreparable harm.

- a. I urgently need to use our water rights during the fall farming season. This is when we apply and work phosphate fertilizer and micronutrients into the soil. Without adequate water to move and incorporate the fertilizer into the soil, portions of the fertilizer may remain on the surface, lose effectiveness, or otherwise fail to benefit the next crop as intended.
- b. Proper soil moisture is also essential when we prepare ground for potatoes. If the soil is too dry during preparation, excessive clods are created. At harvest, these clods are difficult to separate from the potatoes and can cause serious harvesting, sorting, and quality problems, resulting in reduced revenue.
- c. We also cannot carry out our ordinary practice of planting approximately 700 acres of winter wheat if the ground is too dry because of the inability to irrigate. The planting and establishment window is seasonal. Once that window passes, the opportunity to harvest a crop is permanently lost.
- d. Based on my understanding of the federal crop-insurance requirements that apply to our farming operation, crops planted after our irrigation water has been curtailed may not qualify for coverage. Losing that protection would expose our farm to catastrophic loss. I cannot take the gamble of planting crops without having insurance on those crops; and, as noted, I likely cannot obtain crop insurance so long as our water rights remain curtailed.
- e. Water availability now also directly affects our ability to obtain a 2027 potato contract with J.R. Simplot Company. Without a reliable water supply for the 2027 crop, I do not expect the company to offer us a potato contract. The financial difference between contracted and uncontracted potatoes is enormous. The contract price is approximately \$10.00 per hundredweight. Last year, potatoes grown without a contract sold for approximately \$1.75

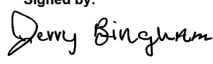
per hundredweight. That is a difference of approximately \$8.25 per hundredweight. At those prices, losing the contract could cause devastating losses for us.

8. Our farm is already facing the difficulty of surviving the harm caused by curtailment during the 2025 irrigation season. A continuing curtailment through this fall and into the spring of 2027 would compound that damage at the very time when fall ground preparation, winter-wheat planting, crop-insurance decisions, financing, and 2027 potato-contract decisions must be made.

9. Despite the ongoing total curtailment, our farm's business obligations continue. For example, we must continue to make land payments, equipment payments, and property tax payments. Without water and crop income, I face the loss of the good credit that I have worked my entire life to build, the possibility of default, and the specter of bankruptcy. If a stay is not granted, I fear that curtailment may end our family's farming legacy and eliminate the livelihood that the farm has provided for our family.

10. The harms described above are immediate. We must make the agricultural, insurance, lending, and contracting decisions now, before a final decision on the petition for review is reached. Once planting windows, insurance opportunities, and contract opportunities are lost, they cannot be fully restored later by relief from this Court, which I understand will be prospective only.

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Signed by:

102F93109F5B48E...
JERRY D. BINGHAM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of September, 2026, I caused a true and correct copy of the foregoing DECLARATION OF JERRY D. BINGHAM IN SUPPORT OF MOTION TO STAY RESPONDENT'S FINAL ORDER PENDING JUDICIAL REVIEW to be served upon the following individuals by the designated method:

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/s/ Reed W. Larsen
Reed W. Larsen