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Seventh Judicial District, Bingham County
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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JERRY D. BINGHAM and VALERIE H. BINGHAM, Petitioners, vs. IDAHO DEPARTMENT OF WATER RESOURCES, Respondent.	Case No. CV06-26-1801 **STIPULATION AND JOINT MOTION FOR CONSOLIDATION AND STAY OF PROCEEDINGS**

Respondent Idaho Department of Water Resources ("Department") and Petitioners Jerry D. and Valerie H. Bingham ("Binghams") (collectively, the "Parties"), by and through their respective counsel of record, hereby stipulate and jointly move the Court, pursuant to I.R.C.P. 2.2(b), 7(b), and 42 and Seventh Judicial District Local Rule B(2), for an order: (1) consolidating related Bingham County Case Nos. CV06-26-1801 (the "Judicial Review Case ") and CV06-26-1837 (the "Civil Complaint Case ") and (2) staying all deadlines and proceedings in the Civil Complaint Case.[1]

[1] Concurrently with the filing of this stipulation, the Parties are filing a Notice of Filing Motion for Consolidation and Stay of Proceedings in Bingham County Case No. CV06-26-1837. *See* 7th Jud. Dist. Loc. Rule B(2).

BACKGROUND

In support of this joint stipulation and motion, the Parties state as follows:

1. On September 15, 2026, the Binghams initiated the Judicial Review Case through the filing of a Petition for Judicial Review ("Petition") seeking review of several orders issued by the Director of the Department. *See* Pet. ¶¶ 3–4.

2. The Judicial Review Case was later reassigned to the presiding judge of the Snake River Basin Adjudication ("SRBA") District Court of the Fifth Judicial District.

3. Idaho Ground Water Appropriators, Inc. ("IGWA"), the members of the Surface Water Coalition, and the City of Pocatello all filed notices of appearance in the Judicial Review Case. In accordance with the Court's Procedural Order, those notices are to be treated as motions to intervene and are pending. Procedural Order ¶ 2.

4. On September 21, 2026, the Binghams initiated the Civil Complaint Case through the filing of a Complaint and Jury Demand ("Complaint"), naming the State of Idaho and the Department as the Defendants, asserting claims for inverse condemnation and unlawful physical taking of their water rights by the State, and seeking just compensation for the alleged taking. Compl. at 2, 8, 11, 13–14. A copy of the Complaint is attached as Exhibit A.

5. The State and Department were served with the Summons and Complaint on September 22, 2026. In accordance with I.R.C.P. 12(a)(1)(A), the deadline for the State and Department to answer or otherwise respond to the Complaint is October 13, 2026.

6. On October 6, 2026, ("IGWA") moved to intervene in the Civil Complaint Case. The motion is pending.

7. In the Judicial Review Case, the Binghams have requested review of the same administrative curtailment and methodology orders that they alleged in Civil Complaint Case to

have effected a taking without payment of just compensation. *Compare* Pet. ¶¶ 3–4, *with* Compl. ¶¶ 16–17 (the Binghams' list of administrative orders at issue in each case). Additionally, among the issues presented for review are whether the Department's curtailment and methodology orders violate Idaho's law of prior appropriation and whether those orders take the Binghams' water rights without payment of just compensation. Pet. ¶ 7.

STIPULATED MOTION FOR CONSOLIDATION

8. Consolidation of two district court actions is allowed if "actions before the court involve a common question of law or fact." I.R.C.P. 42. "Motions to consolidate pursuant to Rule 42, IRCP shall be heard by the judge assigned to the case with the lower filing number." 7th Jud. Dist. Loc. Rule B(2).

9. The parties seek consolidation before the presiding judge of the SRBA because the Judicial Review Case filing number is lower than the number for the Civil Complaint Case, as provided by Seventh Judicial District Local Rule B(2).

10. Consolidation of the two matters is appropriate because: (1) the Judicial Review Case and the Civil Complaint Case arise from the same core of operative facts, *Branom v. Smith Frozen Foods of Idaho, Inc.*, 83 Idaho 502, 508, 365 P.2d 958, 961; (2) there is unity of parties, *id*.; (3) consolidation would promote judicial economy and avoid duplicate proceedings, *McGivney v. Aerocet, Inc.* 165 Idaho 227, 234, 443 P.3d 241, 248 (2019); (4) there is no prejudice to any party, *Jones v. Jones*, 117 Idaho 621, 624, 790 P.2d 914, 917 (1990); and (5) consolidation will help avoid inconsistent adjudications, *see McGivney*, 165 Idaho at 234, 443 P.3d at 248.

11. The Parties do not want to merge every aspect of the two actions. Nothwithstanding that Seventh Judicial District Local Rule B(2) provides that all future papers

be filed under the lower case number, the Parties wish to maintain separation of the consolidated cases given the different processes and procedures required to decide the Judicial Review Case and the Civil Complaint Case. This request is consistent with the holding in *Jones*: "In general, the consolidation of two cases does not have the effect of merging two cases into a single action. Rather, 'consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties.'" *Jones*, 117 Idaho at 624, 790 P.2d at 917 (quoting *Johnson v. Manhattan Ry.,* 289 U.S. 479, 496–98 (1933)); *see McGivney*, 165 Idaho at 232, 443 P.2d at 246. The Parties request the Court consolidate these cases for purposes of judicial assignment, case management and resolution of overlapping legal and factual issues, while preserving the distinct procedural requirements of the two cases.

STIPULATED MOTION FOR STAY

12. A district court has broad discretion to stay proceedings. "[W]hether to grant a stay of proceedings pending the resolution of related proceedings in another court is a matter vested in the sound discretion of the trial court." *Cont'l Cas. Co. v. Brady*, 127 Idaho 830, 834, 907 P.2d 807, 811 (1995) (citing *Newell v. Newell*, 77 Idaho 355, 293 P.2d 663 (1956)).

13. A stay of all proceedings in the Civil Complaint Case pending resolution of the Judicial Review Case will serve the interests of judicial economy and the orderly disposition of the related matters. Allowing this case to proceed on a separate track while the related proceeding advances would risk judicial inefficiency and inconsistency.

14. This stipulated motion for consolidation and stay is submitted jointly. The State of Idaho, a party to the Civil Complaint Case but not a Party to this Judicial Review Case, is represented in the Civil Complaint Case by the same counsel of record as the Department in this Judicial Review Case and also consents and stipulates to all of the contents of this stipulation.

Counsel for the Department discussed the matter with Counsel for IGWA, the Surface Water Coalition, and the City of Pocatello and they do not oppose the motion for consolidation and stay.

15. This stipulation is made in the form required by I.R.C.P. 7(b), is not sought for purposes of delay, and no Party will be prejudiced by the requested stay. Further, I.R.C.P. 2.2(b) permits the Court, for good cause, to extend the time within which an act must be done, also permitting the Parties to extend such time by written stipulation.

16. By entering into this stipulation for consolidation and requesting the stay, no Party waives any claim, defense, objection, or right, including any jurisdictional or procedural objection, all of which are expressly reserved.

RELIEF REQUESTED

The Parties therefore stipulate, and jointly move the Court to order:

a. Related Bingham County Case Nos. CV06-26-1801 and CV06-26-1837 are consolidated for purposes of judicial assignment, case management and resolution of overlapping legal and factual issues and are assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District.

b. All proceedings in the Civil Complaint Case (No. CV06-26-1837) are **STAYED** pending issuance of a remittitur by the SRBA presiding judge in the Judicial Review Case (No. CV06-26-1801). This includes, but is not limited to, the State and Department's deadline to answer or otherwise respond to the Complaint and Jury Demand in the Civil Complaint Case and Binghams' deadline to respond to IGWA's motion to intervene. The State and Department shall answer or otherwise respond to the Binghams' Complaint and Jury Demand and the Binghams shall respond to IGWA's petition to intervene, filed under Bingham County Case No. CV06-26-

1837, within 21 days after the issuance of a remittitur by the SRBA presiding judge in Bingham County Case No. CV06-26-1801.

DATED this 9th day of October 2026.

GARRICK L. BAXTER
Deputy Attorney General
Attorney for Respondent

DATED this 9th day of October 2026.

/s/ Reed W. Larsen
REED W. LARSEN
Cooper & Larsen Chartered
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of October 2026, I caused to be served a true and correct copy of the foregoing Stipulation and Joint Motion for Consolidation and Stay of Proceedings, via iCourt E-File and Serve, upon the following:

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DISTRICT COURT OF THE STATE OF IDAHO

SEVENTH JUDICIAL DISTRICT

BINGHAM COUNTY

JERRY D. BINGHAM and VALERIE H. BINGHAM, Plaintiffs, vs. STATE OF IDAHO and IDAHO DEPARTMENT OF WATER RESOURCES, Defendants.	Case No. CV06-26-1837 **COMPLAINT AND JURY DEMAND** Fee Category $221

EXHIBIT A

Plaintiffs Jerry D. Bingham and Valerie H. Bingham ("Bingham Family") bring this action for inverse condemnation against the State of Idaho and its agency, the Idaho Department of Water Resources (collectively, "Defendants"), seeking just compensation for the taking of their property, as follows:

NATURE OF THIS ACTION

1. This is an inverse condemnation action asking this Court to order Defendants to pay the Bingham Family just compensation for the taking of their private property for public use.

2. Defendants took the Bingham Family's private property (water rights) without formal condemnation proceedings under Idaho Code § 7-701, *et seq.*, and without payment of just compensation in violation of the Idaho Constitution and laws, and the Constitution of the United States. All water rights (whether senior or junior) are constitutionally protected real property that cannot be taken without just compensation. *Bennett v. Twin Falls North Side Land & Water Co.*, 27 Idaho 643, 651, 150 P. 336, 339 (1915); *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 252 P.3d 71 (2011). "When there is insufficient water to satisfy both the senior appropriator's and the junior appropriator's water rights, giving the junior appropriator a preference to the use of the water constitutes a taking for which compensation must be paid." *Clear Springs Foods*, 150 Idaho at 798, 252 P.3d at 79 (citing *Montpelier Milling Co. v. City of Montpelier*, 19 Idaho 212. 113 P. 741 (1911)). This is precisely what Defendants' curtailment orders, as alleged below, have done—disregard the Bingham Family's constitutionally protected priority in favor of junior water users.

3. Article I, § 14, of the Idaho Constitution and the Fifth and Fourteenth Amendments to the United States Constitution provide that private property can be taken for public use only upon payment of just compensation. The necessity for the taking and the amount of just compensation are to be judicially determined, as set forth herein.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiffs Jerry and Valerie Bingham are married persons residing in Bingham County, Idaho, and are the owners of certain real property and associated water rights located in Blackfoot, Bingham County, Idaho, at the time of the taking. Three generations of the Bingham Family have operated their farm in Bingham County.

5. The Bingham Family owns water rights that are among the most senior rights for pumping groundwater from the Eastern Snake River Plain aquifer to irrigate farm crops.

6. The Bingham Family has standing to bring this complaint. *See Day v. Transportation Department*, 166 Idaho 293, 299, 458 P.3d 162, 168 (2020) ("only property owners at the time of the taking have standing to pursue an inverse condemnation claim").

7. Defendant State of Idaho is a state of the United States of America.

8. Defendant Idaho Department of Water Resources ("Department") is an agency department of the State of Idaho created pursuant to the laws of the State of Idaho. *See* Idaho Code § 42-1701, *et seq.*

9. This Court has subject-matter jurisdiction pursuant to Idaho Const. art. V, § 20, and Idaho Code § 1-705.

10. Venue in the District Court of the State of Idaho, Seventh Judicial District, Bingham County, is proper pursuant to Idaho Code §§ 5-401, 5-402, and 5-404. Plaintiffs

reside in this district, and their principal place of business and the real property at issue is in this district. *See* Idaho Code § 67-5272(1).

BACKGROUND AND FACTS

11. The Bingham Family farm consists of approximately one thousand acres. The highest and best use of the Bingham Family's property was and is agricultural. As is the case with other farms in the region, farming operations are not sustainable without the ability to irrigate crops. The irrigation season runs from April 1 to November 1 each year. *Twin Falls Land & Water Co. v. Lind*, 14 Idaho 348, 351-52, 94 P. 164, 165 (1908) ("There is but one irrigating season during each year. That season is defined by law as extending from April 1st to November 1st.").

12. The Bingham Family owns the following water rights (private real property) relevant to this action: 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, the Bingham Family water rights are among the most senior in the Eastern Snake River Plain aquifer.

13. Idaho follows the principle of prior appropriation of water rights, as declared in statute. "As between appropriators, the first in time is first in right." Idaho Code § 42-106. *See also S. Valley Ground Water Dist. v. Idaho Department of Water Res.*, 173 Idaho 762, 780-81, 548 P.3d 734, 752-53 (2024) (quoting *In re A&B Irrigation Dist.*, 155 Idaho 640, 650, 315 P.3d 828, 838 (2013)) ("The prior appropriation doctrine consists of two core principles, 'that the first appropriator in time is the first in right and that water must be placed

to a beneficial use.'"). Prior appropriation applies to subsurface waters as well as surface waters. *See In re A&B Irrigation Dist.*, 155 Idaho at 650, 315 P.3d at 838.

14. Under Idaho law, when there is insufficient water to satisfy the legal entitlements of all users, a senior user may place a "call" for water with the Department. In the Snake River basin, a "call" was submitted to the Department in 2005 by a coalition of senior surface water users. This call required the Department to curtail the amount of water used by users with rights junior to those senior surface water users. Since then, the Department has administered water curtailment and mitigation plans for junior water users within the Eastern Snake River Plain Aquifer watershed and groundwater basin pursuant to Idaho's Conjunctive Management Rules.

15. Until 2025, the Department confined its curtailment orders, issued pursuant to the senior water users' continuing call, to those users with water rights junior to the Bingham Family (with the exception of their 1987 right).

16. But in July 2025, the Department issued a general curtailment order that required all groundwater users with water-right priority after 1900 to completely curtail groundwater pumping unless they agreed to operate under a Department-approved mitigation plan or joined a water district with an approved mitigation plan. *See* Idaho Dep't of Water Resources, Final Order Curtailing Ground Water Rights Junior to October 11, 1900, No. CM-DC-2010-001 (July 25, 2025). This resulted in a total curtailment of the Bingham Family's water rights.

17. Since then, the Department has issued many further curtailment orders, all of which have curtailed the Bingham Family's water rights, to varying degrees, namely:

i. *Order Revising April 2026 Forecast Supply and Continuing May 14, 2026 Curtailment Order (Methodology Steps 5 & 6)*, issued July 21, 2026;

ii. *Order Amending Curtailment List to Include Unmitigated Ground Water Rights*, issued June 17, 2026;

iii. *Final Order Curtailing Ground Water Rights Junior to October 11, 1900*, issued May 14, 2026;

iv. *Final Order Curtailing Ground Water Rights Junior to August 15, 1952*, issued December 8, 2025;

v. *Final Order Establishing 2025 Reasonable Carryover (Methodology Step 9)*, issued November 21, 2025; and

vi. *Order Revising July 2025 Forecast Supply (Methodology Steps 7–8)*, issued September 11, 2025.

18. Since the issuance of the Department's July 25, 2025, Final Order Curtailing Ground Water Rights Junior to October 11, 1900, the Bingham Family has been deprived of its property rights in accessing and using groundwater without payment of just compensation.

19. Owing to the July 2025 curtailment order, and subsequent orders issued by the Department, the Bingham Family has been unable to pump any groundwater (except for a brief period in the spring of 2026). These curtailment orders applied to the Bingham Family without regard to the relative seniority of their water rights among those users with rights arising after 1900. *See generally Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonably Carryover*, Doc. No. CM-DC-2010-001, at 42 (July 19, 2023) (Departmental framework for curtailment, requiring "junior ground water users [to] secure, to the satisfaction of the Director, a volume of water equal to their proportionate share" of any anticipated shortfall to the senior surface water users). But under Idaho's law of prior appropriation, the Department, in its curtailment

orders and mitigation plan, must respect the relative seniority of water rights possessed by groundwater users. *See generally Beecher v. Cassia Creek Irrig. Co.*, 66 Idaho 1, 9, 154 P.2d 507, 510 (1944) ("Each junior appropriator is entitled to divert only at such times as all prior appropriators are being supplied under their appropriations under conditions as they existed at the time the appropriation was made."). The Department did not do so here, but instead prohibited the Bingham Family from using water while allowing junior water users (who had agreed to a Department-mandated mitigation plan) to use the water to which the Bingham Family was and is entitled. Moreover, no possible exception to observance of strict priority—such as lack of beneficial use, futility, or waste—could excuse the Department's actions, because no such exception was or is applicable to the Bingham Family's use of their water rights. Hence, the Department's curtailment orders violated the law of prior appropriation, and in so doing, the Department has taken the water rights held by the Bingham Family, for which the Department must compensate the Bingham Family.

20. The deprivation by Defendants of the Bingham Family's water rights has nearly destroyed their farm and livelihood by preventing them from raising and harvesting crops and by inflicting catastrophic financial losses, which continue to the present day. Without water and without crop income, farm operations are unsustainable, and the Bingham Family faces the loss of the good credit that they have worked their entire lives to build, the possibility of loan defaults, and the specter of bankruptcy. For 2025 and 2026, the Bingham Family was unable to plant potatoes on their farm and had to rent land, resulting in estimated lost revenues from not being able to plant and harvest potatoes (because of added costs for rents) of approximately $300,000. The curtailment also substantially limited the value of

the wheat crop harvested on the farm for 2026, resulting in estimated lost revenue from not having adequate water for the wheat crop of approximately $388,000.

21. Defendants have not instituted formal condemnation proceedings under Idaho Code § 7-701, *et seq.*, and have failed to pay the Bingham Family just compensation.

22. The date of the initial taking occurred on or about July 25, 2025. Accordingly, this action is timely under Idaho Code § 5-224. *See Day*, 166 Idaho at 300, 458 P.3d at 169; *C&G, Inc. v. Canyon Highway Dist. No. 4*, 139 Idaho 140, 75 P.3d 194 (2003).

23. Despite the Bingham Family's diligent efforts to lift the curtailment orders, propose multiple mitigation plans, and pursue administrative and judicial challenges to Defendants' curtailment orders, Defendants have refused to permit the Bingham Family to access or use their property or compensate them for taking their property.

FIRST CLAIM FOR RELIEF

Inverse Condemnation under Idaho Constitution art. I, § 14, and Idaho Code § 7-711

24. Plaintiffs reallege and incorporate by reference every allegation set forth in the preceding paragraphs.

25. The Bingham Family owns water rights as set forth above. The Department's July 2025 and subsequent curtailment orders took the Bingham Family water rights without payment of just compensation in violation of article I, section 14 of the Idaho Constitution, and the Fifth Amendment of the United States Constitution, as incorporated by the Fourteenth Amendment.

26. The Department's curtailment orders deprived the Bingham Family of their private property by disregarding the seniority of the Bingham Family's water rights under

the Idaho doctrine of prior appropriation and prohibiting them from using the water they had the senior right to use. *R.T. Nahas Co. v. Hulet*, 114 Idaho 23, 26-27, 752 P.2d 625, 628-29 (Ct. App. 1988) (citing Idaho Code § 42-106); *Beecher v. Cassia Creek Irrigation Co., Inc.*, 66 Idaho 1, 154 P.2d 507 (1944). Allowing a junior holder of water rights to divert water from a senior holder "is contrary to the underlying basic principle of water rights in the State of Idaho, that first in time is first in right ...." *Application of Boyer*, 73 Idaho 152, 161, 248 P.2d 540, 545 (1952).

27. Article I, § 14, of the Idaho Constitution prohibits the taking of private property for public use without just compensation. The Idaho Constitution provides:

> The necessary use of lands for the construction of reservoirs or storage basins, for the purpose of irrigation, ... to convey water to the place of use for any useful, beneficial or necessary purpose, or for drainage; ... or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state.
>
> Private property may be taken for public use, *but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor.*

Idaho Const. art. I, § 14 (emphasis added). The Idaho Constitution further provides

> *Priority of appropriation shall give the better right as between those using the water* .... But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in section 14 of article I of this Constitution.

Id. art. XV, § 3 (emphasis added). By granting junior right-holders priority over the Bingham Family, Defendants have taken the Bingham Family's property for a public use, requiring the payment of compensation to the Bingham Family.

28. Defendants' actions in depriving the Bingham Family of their water rights constituted an invasion and appropriation of the Bingham Family property rights. *See*

Covington v. Jefferson County, 137 Idaho 777, 780, 53 P.3d 828, 831 (2002). Defendants' curtailment of the Bingham Family's water rights remains in effect, and thus the deprivation of those rights is continuing. *See In re A & B Irrigation Dist.*, 155 Idaho at 653, 315 P.3d at 841. By depriving the Bingham Family of their water rights, Defendants invaded and appropriated the Bingham Family's property, which constituted a taking of the Bingham Family property for a public purpose. *See Covington*, 137 Idaho at 780, 53 P.3d at 831. Further, Defendants invaded the Bingham Family property by depriving them of their water rights in violation of the Idaho law of prior appropriation by assigning mitigation obligations to groundwater users exclusively rather than among all users, surface and groundwater, according to the priority of their water rights.

29. Defendants took the Bingham Family property without due process of law. *See Covington*, 137 Idaho at 780, 53 P.3d at 831.

30. Defendants have taken the Bingham Family property without instituting condemnation proceedings and without paying the Bingham Family just compensation.

31. For the above reasons, the Bingham Family is entitled to payment of just compensation for their private property taken by Defendants in an amount to be proven at trial by a jury, as assessed under Idaho Code § 7-711, together with interest from the date of the taking.

SECOND CLAIM FOR RELIEF

Unlawful Physical Taking of Private Property in Violation of the Takings Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution

32. Plaintiffs reallege and incorporate by reference every allegation set forth in the preceding paragraphs.

33. The Fifth Amendment to the Constitution of the United States, which limits the power of States and their instrumentalities under the Fourteenth Amendment, provides: "No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V ("Takings Clause").

34. The Fifth Amendment's Takings Clause and the Fourteenth Amendment are self-executing limitations on the State's power to take private property, and this claim for relief arises directly under the U.S. Constitution without need for a statutory cause of action or claim for relief, or any federal or state legislative recognition of a cause of action or claim for relief. *See DeVillier v. Texas*, 601 U.S. 285, 291 (2024) ("a property owner acquires an irrevocable right to just compensation immediately upon a taking because of the self-executing character of the Takings Clause with respect to compensation") (citation modified); *First English Evangelical Lutheran Church v. Los Angeles Cnty.*, 482 U.S. 304, 315 (1987).

35. Limiting the power of States and their instrumentalities, such as state-government departments, the Fourteenth Amendment to the U.S. Constitution provides, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities

of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1 ("Due Process Clause"). "The Due Process Clause, like its forebear in the Magna Carta was intended to secure the individual from the arbitrary exercise of the powers of government." *Daniels v. Williams*, 474 U.S. 327, 331 (1986) (citation modified).

36. Plaintiffs are "persons" as that term is used in the Due Process Clause. The Bingham Family owns and possesses "property," in the form of water rights superior to those of most landowners in Bingham County, as that term is used in the Due Process Clause.

37. Ownership of groundwater rights vests the Bingham Family with rights protected by the United States and Idaho Constitutions to make lawful and beneficial uses of that private property. Defendants seized the Bingham Family's water rights and allowed junior right holders to use the water reserved to the Bingham Family, thereby taking from the Bingham Family the entirety of every "stick" in the bundle of rights associated with the ownership of private property, including, but not limited to, the right to exclude others; the right to possess; the right to use; the right to alienate; the right to transfer; the right to gift; the right to sell or lease; and the right to devise or bequeath. *See Casitas Mun. Water Dist. v. United States*, 543 F.3d 1276, 1290 (Fed. Cir. 2008) (when the government "cause[s] water to be diverted away from the plaintiffs' property," and when "the diverted water [is] dedicated to government use or third party use," "the government action [is properly characterized as] as a *per se* taking").

38. By the actions set forth above, Defendants took the Bingham Family's water rights without payment of just compensation in violation of the Takings Clause of the Fifth

Amendment, as incorporated by the Fourteenth Amendment, of the United States Constitution.

RELIEF SOUGHT – JUST COMPENSATION

39. Plaintiffs are entitled to just compensation under the Idaho Constitution, the United States Constitution, and Idaho law, interest on that amount from the date of taking, and business damages as applicable as defined in Idaho Code § 7-711. *See* Idaho Const. art. I, § 14; U.S. Const. amend. V; U.S. Const. amend. XIV; Idaho Code § 7-711; *State ex rel. Winder v. Canyon Vista Family P'ship*, 148 Idaho 718, 228 P.3d 985 (2010).

40. "The compensation to which the owner is entitled is the *full and perfect equivalent* of the property taken. It rests on equitable principles and it means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken. He is entitled to the damages inflicted by the taking." *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 304 (1923) (emphasis added; citations omitted; citing *Monongahela Nav. Co. v. United States*, 148 U.S. 312, 327 (1893)).

41. The Bingham Family is entitled to interest on the just compensation from the date of the initial taking, July 25, 2025, to the date of payment. *See United States v. Rogers*, 255 U.S. 163, 169 (1921) ("the allowance of just compensation by giving interest from the time of taking until payment is a convenient and fair method of ascertaining the sum to which the owner of the land is entitled").

42. The Bingham Family is also entitled to business damages, to the extent applicable per Idaho Code § 7-711(2), as part of the just compensation Defendants are obligated to pay.

43. The Bingham Family seeks costs and reasonable attorney fees as permitted by Idaho law. *See* Idaho Code § 12-117. Idaho courts have awarded fees to prevailing landowners in inverse condemnation litigation. *See, e.g., C&G, Inc.*, 139 Idaho at 145, 75 P.3d at 199 ("The rationale for awarding attorney fees on appeal to a prevailing condemnee is so the condemnee is not deprived of part of the just compensation to which he or she is entitled under the Constitution.").

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Jerry and Valerie Bingham respectfully request the following relief:

i. Judgment in their favor and against Defendants that Defendants have taken the Bingham Family private property under the Idaho and United States Constitutions and ordering Defendants to pay just compensation to the Binghams in an amount to be proven at trial;

ii. Grant of a jury trial to determine all facts pertinent to the takings claims asserted hereinabove;

iii. Award of interest on the amount of just compensation determined at trial, accrued from the date of taking to the date of payment to the Bingham Family;

iv. Judgment against Defendants and in favor of the Bingham Family awarding the Bingham Family reimbursement of their attorney fees and costs; and

v. Judgment granting such other and further relief as the Court deems just and proper.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES.

Dated: September 21, 2026.

Respectfully submitted,

/s/ Reed W. Larsen
Reed W. Larsen
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Bradley R. Cahoon
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Attorneys for Plaintiffs