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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF IDAHO; IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho; and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources, Defendants. IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate, Proposed Intervenor-Defendants.	Case No. 1:22-cv-00236-DKG **IDAHO LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANTS**

The House of Representatives and Senate of the State of Idaho and their respective leaders (collectively the "Legislature") hereby move for leave to intervene in this litigation as a matter of right as defendants pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure. Alternatively, the Legislature moves to intervene permissively pursuant to Rule 24(b)(1)(B). This motion is supported by the memorandum in support of this motion together with the Legislature's proposed answer, the declarations of House Majority Leader Mike Moyle and Senate President Pro Tempore Chuck Winder, filed contemporaneously with this motion, and by all other matters of record.

Before filing this Motion, the undersigned counsel for the Legislature conferred via email with counsel for all parties. Counsel for the State Defendant parties State of Idaho, Idaho Department of Water Resources, and Gary Spackman indicated that they have no objection to the motion. Counsel for Plaintiff United States of America indicated that Plaintiff takes no position on the motion as of its filing.

WHEREFORE, the Legislature respectfully prays this Court for an Order granting this Motion to Intervene as defendants in this matter.

Respectfully submitted this 18th day of July, 2022.

HOLLAND & HART LLP

By: */s/ William G. Myers III*
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Introduction

It is "[t]hrough the structure of its government, and the character of those who exercise government authority," that "a State defines itself as a sovereign." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). An important exercise of State sovereign authority is the exercise of a state legislature's lawmaking power and relatedly the defense of such state laws from constitutional attack. The people of Idaho, through their elected representatives, have determined that the Legislature, a constitutional department of the State, is a necessary and proper, independent branch of state government to exercise this sovereign authority. Idaho Const. art. III, § 1; I.C. § 67-465.

Accordingly, the House of Representatives and Senate of the State of Idaho and their respective leaders (collectively the "Legislature") seek to intervene as defendants to defend the constitutionality of Idaho Code §§ 42-113, 42-222, 42-224, 42-501, 42-502, and 42-504 (collectively, the "Stockwater Statutes") from the challenges raised by the federal government. The Legislature's intervention will not delay this proceeding, as the Legislature is prepared to meet any deadlines the Court sets for this litigation. Additionally, none of the existing parties to the action can adequately represent the Legislature's unique and separate interests.

Because the Legislature meets the requirements for intervention as of right under Federal Rules of Civil Procedure 24(a) or, alternatively, the broad standard for permissive intervention under Rule 24(b), the Legislature respectfully requests leave to intervene as defendants.

Factual and Legal Background

The waters of the State of Idaho are held in trust by the State for the use and benefit of the people and resources of the State. "All the waters of the state . . . are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting same . . . .". I.C. § 42-101. It is the unique province and interest of the

Legislature to establish the laws and framework for the other branches of Idaho's government—the courts and the executive—to administer and manage the waters of the State. Idaho Const., art. XV, § 1 ("The use of all waters now appropriated, or that may hereinafter be appropriated . . . is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed by law."); *id*. art. III, § 1 ("The legislative power of the state shall be vested in a senate and house of representatives.").

In fulfilling these constitutional duties, the State of Idaho has been diligently working to adjudicate the water rights throughout the state. The process involves lengthy, basin-wide adjudications that can take many years. *See, e.g.*, I.C. §§ 42-1405 to -1406, -1407 to -1424 (statutory procedures for the initiation and administration of a general water rights adjudication in Idaho). The Snake River Basin Adjudication ("SRBA"), which began in 1987 and culminated in 2014, decreed thousands of water rights to the United States for the beneficial use of watering livestock on federal lands. *See generally* Ann Y. Vonde et al., *Understanding the Snake River Basin Adjudication,* 52 Idaho L. Rev. 53 (2016). The stockwater rights that are the subject of the United States' complaint and the State's current administrative proceedings were decreed to the United States through the SRBA.

In 2007, the Idaho Supreme Court ruled in favor of federal grazing permittees who objected to the United States' stockwater claims. *Joyce Livestock Co. v. United States* (*Joyce Livestock*), 156 P.3d 502 (Idaho 2007)[1]. *Joyce Livestock* dealt with claims related to constitutional stockwater rights acquired through instream stockwatering and held that an agency

[1] *See also LU Ranching Co. v. United States*, 156 P.3d 590 (Idaho 2007) (companion case to *Joyce Livestock*)

of the federal government cannot obtain a stockwater right under Idaho law unless it actually owns livestock and puts the water to beneficial use. *Id.* at 519.

In *Joyce Livestock*, the Idaho Supreme Court held that the United States "bases its claim upon the [state] constitutional method of appropriation. That method requires that the appropriator actually apply the water to a beneficial use. Since the United States has not done so, the district court did not err in denying its claimed water rights." *Id*. at 520. The court also held that federal ownership or management of the land alone does not qualify it for stockwater rights.

As the Idaho Supreme Court explained:

> The United States claimed instream water rights for stock watering based upon its ownership and control of the public lands coupled with the Bureau of Land Management's comprehensive management of public lands under the Taylor Grazing Act . . . The argument of the United States reflects a misunderstanding of water law . . . As the United States [Supreme Court] has held, Congress has severed the ownership of federal lands from the ownership of water rights in nonnavigable waters located on such lands.
>
> …
>
> Under Idaho Law, a landowner does not own a water right obtained by an appropriator using the land with the landowner's permission unless the appropriator was acting as agent of the owner in obtaining that water right . . . "If the water right was initiated by the lessee, the right is the lessee's property, unless the lessee was acting as the agent of the owner . . ." The Taylor Grazing Act expressly recognizes that ranchers could obtain their own water rights on federal land.

156 P.3d 518-521.

Since 2017, the Legislature has revised and added to the Idaho Code to clarify and refine the stockwater laws in light of the *Joyce Livestock* decision. Decl. of Chuck Winder ("Winder Decl."), filed contemporaneously, ¶¶ 3-5; Decl. of Mike Moyle ("Moyle Decl."), filed contemporaneously, ¶¶ 3-5. These Idaho statutes, among other things, establish a procedure for

the forfeiture of existing stockwater rights under Idaho Code § 42-222(2), first codified in 1903. *See* I.C. § 42-224(1).

On May 13, 2022, the State of Idaho and the Idaho Department of Water Resources ("IDWR"), acting through the Director of IDWR (collectively, "the State Defendants"), issued three orders requiring the United States to show cause within twenty-one days why fifty-seven federally owned stockwater rights should not be forfeited for non-use. Under the 119-year-old Idaho forfeiture statute as amended and the most recent of these Stockwater Statutes, signed into law on March 24, 2022, these show cause orders initiate a process under which IDWR and the Idaho Attorney General must take a series of actions potentially, but not necessarily, culminating in a civil action for forfeiture against the United States in Idaho state court. On June 22, 2022, IDWR issued another show cause order regarding federal stockwater rights on Forest Service lands in Idaho. Following the issuance of the show cause orders, the United States government sued IDWR and the Director of IDWR (Dkt. 1; 11) challenging the constitutionality of Idaho Code §§ 42-113, 42-222, 42-224, 42-501, 42-502, and 42-504 (collectively, the "Stockwater Statutes"). Winder Decl. ¶ 6; Moyle Decl. ¶ 6.

Argument

Rule 24 provides for two means by which an applicant may intervene in an action: intervention as of right under subsection (a) and permissive intervention under subsection (b). The proposed Defendant-Intervenors comprising and leading the Idaho Legislature satisfy both standards.

I. The Legislature is Entitled to Intervene as of Right.

Rule 24(a)(2) in relevant part provides:

> On timely motion, the court must permit anyone to intervene who . . . claims an interest related to the property or transaction that is the subject of the action, and is so situated that disposing of the

> action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

In *Southwest Center for Biological Diversity v. Berg* (*Berg*), 268 F.3d 810 (9th Cir. 2001), the Ninth Circuit held that the district courts must construe this rule liberally in favor of intervention. *Id.* at 818. This Court's evaluation is "guided primarily by practical considerations," not technical distinctions. *Id.* The applicant for intervention as of right must satisfy a four-part test from *Berg*:

> (1) the application for intervention must be timely;
>
> (2) the applicant must have a 'significantly protectable' interest related to the property or transaction that is the subject of the action;
>
> (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and
>
> (4) the applicant's interest must not be adequately represented by the existing parties in the lawsuit.

W. Watersheds Project v. U.S. Fish and Wildlife Serv., No. 4:CV 10-229-BLW, 2011 WL 2690430 at *2 (D. Idaho July 9, 2011) (*citing Berg*, 268 F.3d at 817).

Proposed Intervenors are deeply concerned with defending the laws that the Legislature has passed pursuant to its constitutional authority and that serve the State's vital interest in managing the State's water resources and protecting those resources in this arid land from waste or non-use. Here, the Legislature is entitled to intervene as of right. Its motion is timely; the Legislature has significant, protectable interests that could be impaired by the disposition of this action; and no other parties adequately represent the Legislature's unique and separate interests in this case.

A. The Legislature's Motion to Intervene is Timely.

Three factors determine whether an intervention motion is timely: (1) the stage of the proceeding; (2) prejudice to other parties; and (3) reason for, and length of any delay. *W. Watersheds Project v. Ashe*, Case No. 4:11-CV-00462-EJL, 2012 WL 12899085 at *2 (D. Idaho Mar. 1, 2012); *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016).

The Legislature's motion is timely. The First Amended Complaint (Dkt. 11) was filed three days before this filing. The case is in the earliest stages and no litigation plan has been entered. By seeking intervention now, the Legislature avoids prejudicing the other parties or disrupting the case's management or schedule.

B. The Legislature has Significant Protectable Interests in this Action.

Intervention of right requires the proposed intervenor to demonstrate a significantly protectable interest that may be impaired by the proceeding before the court. This factor is often considered together with the third factor that considers whether the applicant's interest could be impaired by the court's determination. *See, e.g.*, *W. Watersheds Project v. U.S. Fish and Wildlife Serv.*, 2011 WL 2690430 at *3. In considering both factors, the court follows "'practical and equitable considerations and construe[s] the Rule broadly in favor of proposed intervenors.'" *Id.* (*citing Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011)); *see also W. Watersheds Project v. U.S. Forest Serv.*, Case No. 1:15-cv-00218-REB, 2015 WL 7451169 at *2 (D. Idaho Nov. 23, 2015).

Proposed Intervenors have a significant, protectable interest in the upholding the validity of the Stockwater Statutes that they enacted. Indeed, as the United States Supreme Court very recently stated: "No one questions that States possess a legitimate interest in the continued enforcement of their own statutes." *Berger v. N.C. State Conference of the NAACP* (*Berger*), No. 21-248, 2022 U.S. LEXIS 3052, at *19 (U.S. June 23, 2022) (cleaned up) (holding that

North Carolina's legislative leaders were entitled to intervene in litigation challenging voter identification laws that were already being defended by the State's Attorney General); *see also Cameron v. EMW Women's Surgical Center, P.S.C.*, 212 L. Ed. 2d 114, 124 (2022).

State legislatures have a unique and separate institutional interest as an independent branch of the sovereign state government in seeing that their enactments are not "nullified." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2665 (2015). Longstanding U.S. Supreme Court authority establishes that legislatures and state legislative officials have the authority to defend (or in appropriate circumstances contest) state enactments in federal court when State law "authorize[s]" them "to represent the [State] Legislature in litigation." *Karcher v. May* (*Karcher*), 484 U.S. 72, 81 (1987); *see also Arizonans for Official English v. Arizona*, 520 U.S. 43, 65 (1997) ("[S]tate legislators have standing to contest a decision holding a state statute unconstitutional if state law authorizes legislators to represent the State's interests.").

Here, Idaho law expressly authorizes the Idaho House and Senate to intervene in actions like this. Section 67-465 of the Idaho Code provides:

> When a party to an action challenges in state or federal court the constitutionality of an Idaho statute, facially or as applied, challenges an Idaho statute as violating or being preempted by federal law, or otherwise challenges the construction or validity of an Idaho statute, either or both houses of the legislature may intervene in the action as a matter of right by serving a motion upon the parties as provided in state or federal rules of civil procedure, whichever is applicable.

This Idaho law establishes the Legislature's interest and qualifies it to defend the Stockwater Statutes under *Karcher*. There, the Supreme Court reasoned that New Jersey legislative officials had standing to defend New Jersey law because "[t]he New Jersey Supreme Court has granted applications of the Speaker of the General Assembly and the President of the

Senate to intervene as parties-respondent on behalf of the legislature in defense of a legislative enactment." 484 U.S. at 82. Similarly, even prior to *Berger* and the enactment of I.C. § 67-465, the Idaho Supreme Court has allowed the Legislature to intervene in an action against the State of Idaho challenging a specific legislative enactment. *See*, *e.g.*, *Reclaim Idaho v. Denney*, 497 P.3d 160, 166 (Idaho 2021) (in review of challenge to initiative and referendum procedures statutes, reciting that the "petition is opposed by the Idaho Secretary of State . . . , who is represented by the Attorney General, as well as the Intervenor-Respondents [legislative leaders] . . . and the Sixty-Sixth Idaho Legislature (collectively 'the Legislature'), which retained independent counsel") (footnote omitted).

In *Berger*, the Supreme Court explained that when a State chooses to divide its sovereign authority among different officials and authorizes their participation in a suit challenging state law, full consideration of the state's interests may require the involvement of various officials. *Berger*, 2022 U.S. LEXIS 3052, at *21. Further, the Court reasoned that intervention by the legislators neither violated the North Carolina Constitution nor gave them authority beyond what the law already provides them. *Id*. at *24.

So too here. The Idaho Legislature is authorized by state statute to intervene in precisely this type of case. I.C. § 67-465; Winder Decl. ¶ 7; Moyle Decl. ¶ 7. Additionally, the Legislature has a significant interest in defending the Stockwater Statutes it passed from constitutional challenges. *Id*.; *see*, *e.g.*, Idaho Const. art. XV, § 1 (The use of all appropriated state water is a public use subject to regulations and control of the state "in the manner prescribed by law."), § 7 (There is constituted within the state a water resource agency composed and with powers "under such laws as may be prescribed by the Legislature"); *Id.* art. XVI § 1 (The Legislature may establish regulations "as may be necessary for the protection of stock

owners and most conducive to the stock interests within this state.") The Legislature's significant, protectable, interest in stockwater rights is evidenced by the numerous enactments it has undertaken in recent years as alleged, albeit inaccurately, in Plaintiff's amended complaint. Dkt. 11 at 12-24.

In sum, with the codification of I.C. § 67-465, this Court need not infer an interest recognized from a prior state court decision but rather can rely upon the express provisions of State statutory law. In any event, the Legislature has demonstrated protectable interests under either approach. Thus, the Legislature's significant, direct, and legally protectable interests in upholding the constitutionality of the Stockwater Statutes support intervention as of right.

C. The Legislature's Interest in the United States' Compliance with the Stockwater Statutes will be Impaired if the Court Rules in Favor of the United States.

The third intervention factor—practical impairment of interests—is generally met through a showing that the Legislature's interests are directly contrary to Plaintiffs' interests. *Alliance for the Wild Rockies*, 2016 WL 7626528 at *2.

The disposition of the present case could, as a practical matter, impair the Legislature's interests in ensuring that the laws they passed as the duly elected representatives of the people of Idaho remain in effect. *See Berger*, 2022 U.S. LEXIS 3052, at *19-*20 ("[F]ederal courts should rarely question that a State's interests will be practically impaired or impeded if its duly authorized representatives are excluded from participating in federal litigation challenging state law."); Winder Decl. ¶ 8; Moyle Decl. ¶ 8. Plaintiff asks this Court to declare the Stockwater Statutes unconstitutional under the Supremacy, Property, and Contract Clauses of the United States Constitution; federal sovereign immunity; and the Retroactivity Clause of the Idaho Constitution. *See* Dkt. 11 ¶ 4. If the Court grants this relief, the Legislature's efforts to pass the

Stockwater Statutes will have been "completely nullified." *Ariz. State Legislature*, 135 S. Ct. at 2665.

And the Supreme Court instructs that "[p]ermitting the participation of lawfully authorized state agents promotes informed federal-court decisionmaking and avoids the risk of setting aside duly enacted state law based on an incomplete understanding of relevant state interests." *Berger*, 2022 U.S. LEXIS 3052, at *21. As in *Berger*, the State of Idaho through its codification of I.C. § 67-465 "has made plain that it considers the [Legislature] 'necessary parties' to suits like this one." *Id.* at *22. "[A] full consideration of the State's practical interests may require involvement of different voices with different perspectives. . . essential to a fair understanding of its interests." *Id*. at *25.

Thus, the Legislature demonstrates that its significant protectable interests could practically be impaired by the outcome of this case.

D. The Legislature's Interests Cannot be Adequately Represented by Existing Parties.

"The requirement of [inadequate representation] is satisfied if the applicant shows that representation of his interest may be inadequate." *Trbovich v. United Mine Workers of Am*., 404 U.S. 528, 538 n.10 (1972) (emphasis added). The adequacy of representation test presents "proposed intervenors with only a minimal challenge." *Berger*, 2022 U.S. LEXIS 3052, at *26; *Trbovich*, 404 U.S. at 538 n.10; *see also* 7C WRIGHT & MILLER, FED. PRAC. & PROC. CIV. § 1909 (3d ed. Sept. 2018) ("[T]here is good reason in most cases to suppose that the applicant is the best judge of the representation of the applicant's own interests and to be liberal in finding that one who is willing to bear the cost of separate representation may not be adequately represented by the existing parties.").

The Ninth Circuit's three-part test is: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011).

The Supreme Court in *Berger* addressed the inadequacy of a state Attorney General's sole representation of a legislature. The Supreme Court held that the existing parties did not adequately represent the legislators' interests, as the presumption of adequate representation is "inappropriate" when a legislatively authorized state party seeks to intervene. *Berger*, 2022 U.S. LEXIS 3052, at *29 ("Normally, a State's chosen representatives should be greeted in federal court with respect, not adverse presumptions.") Accordingly, the Supreme Court held that the legislators should be allowed to intervene as of right. The same result should apply here.

The Legislature's interests here are also narrower and more specific—and apart from—the broader overall State interests represented by the State of Idaho defendant parties here. The State Defendants represent the full breadth of Idaho's state government including the Department of Water Resources, other executive agencies and the Governor, and the water adjudication courts. But only the Legislature itself can focus on the legislative interests of the people of the State as exercised through their duly elected state Senators and Representatives. It is these unique interests and perspectives, previously recognized in other cases, and unable to be represented by the other parties to this action, that further establish the inadequacy of representative by the existing parties here. *See*, *e.g.*, *Berger*, 2022 U.S. LEXIS 3052, at *29; Winder Decl. ¶ 9; Moyle Decl ¶ 9.

Additionally, the Legislature may take positions on the merits that would offer a different perspective than that of the State Defendants. For example, Defendants IDWR and Director Spackman have asserted in the show cause orders that instigated this litigation that water right forfeiture "is disfavored in Idaho law." *See, e.g.*, Am. Order Partially Granting Pet.; Am. Order to Show Cause, Dkt. 1-1 at 5; Winder Decl. ¶ 9; Moyle Decl. ¶ 9. While that may be an accurate statement for Idaho water rights generally, forfeiture of stockwater rights cannot be said to be disfavored given I.C. § 42-224's detailed procedures for determining when and how such rights should be forfeited. The Legislature's lawmaking experience, especially in this water rights administration realm, would assist the Court in understanding the broader implications of the case on Idaho laws and governance, thus demonstrating its interests may not be adequately represented by the State Defendants. *W. Watersheds Project v. U.S. Forest Serv.*, 2015 WL 7451169 at *2.

In sum, the Legislature should be allowed to intervene as of right because the motion is timely, the Legislature has significant protectable interests in defending the constitutionality of the Stockwater Statutes that would be impaired if the Plaintiff prevails on some of its claims in the case, and the existing parties do not adequately represent the Legislature's unique and separate interests as the independent, co-equal lawmaking branch of state government.

II. In the Alternative, the Legislature may Permissively Intervene.

Alternatively, the Legislature should be permitted to intervene permissively pursuant to Rule 24(b)(1)(B), which provides:

> On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.

Permissive intervention may be granted where "(1) there is an independent ground for jurisdiction; (2) the motion is timely; and (3) the movant's claim or defense and the main action

must have a common question of the law or fact in common." *Amanatullah v. U.S. Life Ins. Co.*, Case No. 4:15-cv-00056-EJL, 2017 WL 2906045 at *1 (D. Idaho June 29, 2017) (citation omitted). Additionally, the court will consider whether intervention will unduly delay or prejudice the original parties and whether the movant's interests are adequately represented by existing parties. *Id.*

The Legislature satisfies each of these requirements. An independent ground for jurisdiction exists through the federal question statute, 28 U.S.C. § 1331, augmented through supplemental jurisdiction under 28 U.S.C. § 1367. As above, the motion is timely and will not delay proceedings or otherwise prejudice existing parties. The Legislature will comply with any briefing schedule set by the Court. Similarly, the Legislature explained above why the existing parties cannot adequately represent its interests. Finally, the Legislature's defenses share with the "main action" questions of both law and fact. Rule 24(b)(2)(B). Information and argument provided by the Legislature will squarely address these factual and legal questions.

Therefore, the criteria for permissive intervention are also met here.

Conclusion

The Legislature's motion to intervene as Defendants as of right pursuant to Rule 24(a)(2), or alternatively permissively pursuant to Rule 24(b), should be granted.

Respectfully submitted this 18th day of July, 2022.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF IDAHO; IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho; and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources, Defendants.	Case No. 1:22-cv-00236-DKG **DECLARATION OF CHUCK WINDER IN SUPPORT OF IDAHO LEGISLATURE'S MOTION TO INTERVENE**
IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate, Proposed Intervenor-Defendants.	

I, Chuck Winder, declare and state as follows:

1. I am a member of the Idaho Senate who represented the 14th District from 2008-2012. I currently represent District 20 and serve as the Idaho Senate's President Pro Tempore. This is my seventh term in the Idaho Senate.

2. I am a former United States Navy officer, Naval Aviator, and flight instructor.

3. Constituents in my district and throughout Idaho hold federal Bureau of Land Management and U.S. Forest Service grazing permits or leases in Idaho. The Idaho Legislature has been engaged in ensuring federal land grazing permittees and lessees have the opportunity to file for and receive stockwater rights in their names on their federally administered allotments as provided for by federal statutes, by the Idaho Code, Title 42, and as recognized by the Idaho Supreme Court in *Joyce Livestock Co. v. United States*, 156 P.3d 502 (Idaho 2007).

4. In the 2017 Legislative Session, both the House of Representatives and the Senate of the State of Idaho (the "Legislature") passed Senate Bill 1111 and Senate Bill 1101, which codify elements of the *Joyce Livestock* decision and further clarify water as a property right that belongs to individuals, not the federal government. The law states that a federal agency cannot acquire a stockwater right unless the agency owns livestock and puts the water to beneficial use and clarifies that a grazing permittee cannot be considered an agent of the federal government.

5. Since 2017, the Idaho Legislature has revised and added to the Idaho Code, including clarifying and refining the stockwater forfeiture process in light of the *Joyce Livestock* decision. These Idaho statutes, among other things, establish a procedure for forfeiture of existing stockwater rights pursuant to I.C. § 42-222(2). *See* I.C. § 42-224.

6. On May 13, 2022, the State of Idaho and the Idaho Department of Water Resources ("IDWR"), acting through the Director of IDWR (collectively, "the State

Defendants"), issued three orders requiring the United States to show cause within twenty-one days why fifty-seven federally owned stockwater rights should not be forfeited for non-use. Under a 119-year-old Idaho statute, as amended and under the most recent of these statutes, signed into law on March 24, 2022, these show cause orders initiate a process under which IDWR and the Idaho Attorney General must take a series of actions potentially, but not necessarily, culminating in a civil action for forfeiture against the United States in Idaho state court. Following the issuance of the show cause orders, the United States government sued IDWR and the Director of IDWR in this case challenging the constitutionality of Idaho Code §§ 42-113, 42-222, 42-224, 42-501, 42-502, and 42-504 (collectively, the "Stockwater Statutes"). On June 22, 2022, after the Complaint was filed, IDWR issued another show cause order regarding federal stockwater rights on Forest Service lands in Idaho.

7. As an individual state Senator, and a member of the Idaho Legislature, I and my colleagues are deeply concerned with defending the laws that we have passed pursuant to our state constitutional authority. That authority has been recognized by the United States for over 132 years, ever since Congress admitted Idaho to the Union. Pub. L. 105-296, § 1 (July 3, 1890)). The Stockwater Statutes enacted by the Legislature reflect the people of Idaho's vital interests, expressed through their duly elected legislators, in protecting the State's water from waste or non-use. As legislators, and on behalf of those we represent, we have a significant interest in upholding the validity of these laws. The Legislature has also formally recognized its interests in upholding the laws it enacts with the passage of Idaho Code Section 67-465. That provision authorizes the Idaho House and Senate to intervene in actions like this one that challenge the constitutionality of legislation enacted by the House and Senate.

8. An adverse decision in this case could impair our Legislature's interests in ensuring that the laws we pass are able to actually take effect. A decision adverse to the Legislature's interests here will affect and burden our continuing ability to enact laws governing water appropriation and administration, as the Legislature has done even before statehood dating back to the Idaho Territorial Legislature.

9. These interests of the Legislature cannot be adequately represented by the existing parties in this litigation. That is one of the reasons that the Legislature enacted Idaho Code Section 67-465 authorizing intervention in cases like this. The Legislature here seeks to defend its unique and separate interests in passing legislation to protect the water resources of the State and water rights of Idaho citizens from waste or non-use. These specific interests are different from the broader State interests that the Idaho Attorney General must balance in representing the State Defendants. The Attorney General there has the task, not always possible, of trying to accommodate and reconcile the interests of other co-equal constitutional branches of the Idaho government, including for instance the Idaho Department of Water Resources and the Governor's office in the Executive Branch, and the water adjudication courts in the Judicial Branch. But the Legislature's own unique interests as the legislative lawmaking constitutional department of state government are adequately represented only through the Legislature's independent participation as a party in this litigation. If the United States succeeds in its claims, that would significantly affect the Legislature's ability to uphold and implement the Stockwater Statutes. If allowed to intervene here, the Legislature would vigorously defend the Stockwater Statutes on behalf of its own institutional interests and as the duly elected representatives of all the citizens of Idaho. Additionally, the Legislature's lawmaking experience, especially in this water rights administration realm, would assist the Court in understanding the broader

implications of the case on Idaho laws and governance. Moreover, the Legislature, if allowed to intervene, may offer different perspectives on the merits of the issues such as whether stockwater forfeiture is disfavored under Idaho law.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 15th day of July, 2022 at Boise, Idaho.

CHUCK WINDER

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF IDAHO; IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho; and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources, Defendants. IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate, Proposed Intervenor-Defendants.	Case No. 1:22-cv-00236-DKG **DECLARATION OF MIKE MOYLE IN SUPPORT OF IDAHO LEGISLATURE'S MOTION TO INTERVENE**

I, Mike Moyle, declare and state as follows:

1. I am the Majority Leader for the Idaho House of Representatives and represent Legislative District 14, Seat A. This is my twelfth term in the House of Representatives.

2. I am a farmer. I currently serve on the board of the Middleton Irrigation District, and formerly served as a fire commissioner for Star, Idaho, and on the Far West Spearmint Committee.

3. Constituents in my district and throughout Idaho hold federal Bureau of Land Management and U.S. Forest Service grazing permits or leases in Idaho. The Idaho Legislature has been engaged in ensuring federal land grazing permittees and lessees have the opportunity to file for and receive stockwater rights in their names on their federally administered allotments as provided for by federal statutes, by the Idaho Code, Title 42, and as recognized by the Idaho Supreme Court in *Joyce Livestock Co. v. United States*, 156 P.3d 502 (Idaho 2007).

4. In the 2017 Legislative Session, both the House of Representatives and the Senate of the State of Idaho (the "Legislature") passed Senate Bill 1111 and Senate Bill 1101, which codify elements of the *Joyce Livestock* decision and further clarify water as a property right that belongs to individuals, not the federal government. The law states that a federal agency cannot acquire a stockwater right unless the agency owns livestock and puts the water to beneficial use and clarifies that a grazing permittee cannot be considered an agent of the federal government.

5. Since 2017, the Idaho Legislature has revised and added to the Idaho Code, including clarifying and refining the stockwater forfeiture process in light of the *Joyce Livestock* decision. These Idaho statutes, among other things, establish a procedure for forfeiture of existing stockwater rights pursuant to I.C. § 42-222(2). *See* I.C. § 42-224.

6. On May 13, 2022, the State of Idaho and the Idaho Department of Water Resources ("IDWR"), acting through the Director of IDWR (collectively, "the State Defendants"), issued three orders requiring the United States to show cause within twenty-one days why fifty-seven federally owned stockwater rights should not be forfeited for non-use. Under a 119-year-old Idaho statute, as amended and under the most recent of these statutes, signed into law on March 24, 2022, these show cause orders initiate a process under which IDWR and the Idaho Attorney General must take a series of actions potentially, but not necessarily, culminating in a civil action for forfeiture against the United States in Idaho state court. Following the issuance of the show cause orders, the United States government sued IDWR and the Director of IDWR in this case challenging the constitutionality of Idaho Code §§ 42-113, 42-222, 42-224, 42-501, 42-502, and 42-504 (collectively, the "Stockwater Statutes"). On June 22, 2022, after the Complaint was filed, IDWR issued another show cause order regarding federal stockwater rights on Forest Service lands in Idaho.

7. As an individual state Representative, and a member of the Idaho Legislature, I and my colleagues are deeply concerned with defending the laws that we have passed pursuant to our state constitutional authority. That authority has been recognized by the United States for over 132 years, ever since Congress admitted Idaho to the Union. Pub. L. 105-296, § 1 (July 3, 1890)). The Stockwater Statutes enacted by the Legislature reflect the people of Idaho's vital interests, expressed through their duly elected legislators, in protecting the State's water from waste or non-use. As legislators, and on behalf of those we represent, we have a significant interest in upholding the validity of these laws. The Legislature has also formally recognized its interests in upholding the laws it enacts with the passage of Idaho Code Section 67-465. That

provision authorizes the Idaho House and Senate to intervene in actions like this one that challenge the constitutionality of legislation enacted by the House and Senate.

8. An adverse decision in this case could impair our Legislature's interests in ensuring that the laws we pass are able to actually take effect. A decision adverse to the Legislature's interests here will affect and burden our continuing ability to enact laws governing water appropriation and administration, as the Legislature has done even before statehood dating back to the Idaho Territorial Legislature.

9. These interests of the Legislature cannot be adequately represented by the existing parties in this litigation. That is one of the reasons that the Legislature enacted Idaho Code Section 67-465 authorizing intervention in cases like this. The Legislature here seeks to defend its unique and separate interests in passing legislation to protect the water resources of the State and water rights of Idaho citizens from waste or non-use. These specific interests are different from the broader State interests that the Idaho Attorney General must balance in representing the State Defendants. The Attorney General there has the task, not always possible, of trying to accommodate and reconcile the interests of other co-equal constitutional branches of the Idaho government, including for instance the Idaho Department of Water Resources and the Governor's office in the Executive Branch, and the water adjudication courts in the Judicial Branch. But the Legislature's own unique interests as the legislative lawmaking constitutional department of state government are adequately represented only through the Legislature's independent participation as a party in this litigation. If the United States succeeds in its claims, that would significantly affect the Legislature's ability to uphold and implement the Stockwater Statutes. If allowed to intervene here, the Legislature would vigorously defend the Stockwater Statutes on behalf of its own institutional interests and as the duly elected representatives of all

the citizens of Idaho. Additionally, the Legislature's lawmaking experience, especially in this water rights administration realm, would assist the Court in understanding the broader implications of the case on Idaho laws and governance. Moreover, the Legislature, if allowed to intervene, may offer different perspectives on the merits of the issues such as whether stockwater forfeiture is disfavored under Idaho law.

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I declare under penalty of perjury that the foregoing is true and correct

Executed on this 14th day of July, 2022 at Boise, Idaho.

/s/ Mike Moyle
MIKE MOYLE

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF IDAHO; IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the Legislature of Idaho; and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources, Defendants.	Case No. 1:22-cv-00236-DKG **IDAHO LEGISLATURE'S [PROPOSED] ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF [Dkt. 11]**
IDAHO HOUSE OF REPRESENTATIVES; MIKE MOYLE, in his official capacity as Majority Leader of the House; IDAHO SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate, Proposed Intervenor-Defendants.	

The House of Representatives and Senate of the State of Idaho and their respective leaders (collectively the "Legislature") answer the allegations of the First Amended Complaint for Declaratory and Injunctive Relief (Dkt. 11) as follows. The numbered paragraphs below correspond to the numbered paragraphs of the Amended Complaint. The Legislature does not agree to or admit that paragraph or section headings or subheadings are accurate, appropriate, or substantiated, and not all such headings or subheadings are restated here. All allegations, whether express or implied, not specifically admitted, denied or qualified are hereby expressly denied

I. INTRODUCTION

1. The Legislature admits that the Plaintiff owns in trust for the people of the United States land within the boundaries of the State of Idaho and that the Plaintiff makes some of these acres available for grazing by livestock owned by persons or entities holding federal grazing permits or leases. The Legislature further admits that the Plaintiff holds decreed water rights for "stockwater" use on federal lands within Idaho. The Legislature denies the remaining allegations in Paragraph 1.

2. The allegations in Paragraph 2 purport to characterize Idaho Code §§ 42-113, 4224 and 42-501 through -507, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

3. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first, second and fourth sentences of Paragraph 3 and therefore denies the same. The second sentence of Paragraph 3 purports to characterize Idaho Code § 42-224, a document which speaks for itself and provides the best evidence of its

contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

4. Paragraph 4 states conclusions of law or argument to which no response is required. To the extent a response is required, the Legislature denies the allegations in Paragraph 4 of the Amended Complaint.

5. Paragraph 5 characterizes Plaintiff's Amended Complaint to which no response is required. To the extent a response is required, the allegations are denied.

II. JURISDICTION

6. Paragraph 6 characterizes the law or alleges legal conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

III. VENUE

7. Paragraph 7 characterizes the law or alleges legal conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

IV. PARTIES

8. The Legislature admits that the Plaintiff is suing on its own behalf and on behalf of the United States Bureau of Land Management ("BLM") and the United States Forest Service ("USFS"). The Plaintiff has not identified any other executive departments, subdivisions, or agencies the Plaintiff is suing on behalf of, and the Legislature therefore denies the remaining allegations in Paragraph 8.

9. The Legislature admits that the BLM is a federal agency within the United States Department of the Interior and charged by Congress with managing certain public lands in Idaho and certain other states, and that the BLM is congressionally authorized to permit and oversee

livestock grazing on some of these public lands. The Legislature denies the remaining allegations in Paragraph 9.

10. The Legislature admits that the USFS is a federal agency within the United States Department of Agriculture that is charged by Congress with managing the National Forest System, including National Forest System lands within Idaho, and that the USFS is congressionally authorized to permit and oversee livestock grazing on these lands. The Legislature denies the remaining allegations in Paragraph 10.

11. The Legislature admits the allegations in Paragraph 11 of the Amended Complaint.

12. The Legislature admits the allegations in Paragraph 12 of the Amended Complaint, but notes that while IDWR is often colloquially referred to as an "agency" of the State of Idaho, it is in fact "an executive department" of Idaho state government. Idaho Code § 42-1701(1).

13. The Legislature admits the allegations in Paragraph 13 of the Amended Complaint.

V. GENERAL ALLEGATIONS

14. The allegations in Paragraph 14 quote Clause 2 of Section 3 of Article IV of the United States Constitution, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

15. The allegations in Paragraph 15 quote Clause 2 of Article VI of the of the United States Constitution, a document which speaks for itself and provides the best evidence of its

contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

16. The allegations in Paragraph 16 quote Clause 1 of Section 10 of Article I of the of the United States Constitution, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

17. The allegations in Paragraph 17 purport to characterize the *Block v. N. Dakota*, 461 U.S. 273 (1983) decision, a U.S. Supreme Court opinion which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

18. The allegations in Paragraph 18 purport to characterize certain parts of 43 U.S.C. § 666 (commonly known as the "McCarran Amendment"), *United States v. Idaho ex rel. Dir., Idaho Dep't of Water Res.*, 508 U.S. 1 (1993), and *Miller v. Jennings*, 243 F.2d 157 (5th Cir. 1957), documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

19. The allegations in Paragraph 19 purport to characterize a portion of Section 12 of Article XI of the Idaho Constitution and correctly quotes a portion of a sentence from the decision in *Frisbie v. Sunshine Mining Co.*, 93 Idaho 169, 457 P.2d 408 (1969), documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

20. The allegations in Paragraph 20 purport to characterize 43 U.S.C. §§ 315-315c, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

21. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 and therefore denies the same.

22. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 and therefore denies the same.

23. The allegations in Paragraph 23 purports to characterize 16 U.S.C. § 551, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

24. The allegations in Paragraph 24 purport to characterize the decision in *United States v. Grimaud*, 220 U.S. 506 (1911), a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

25. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25 and therefore denies the same.

26. The Legislature admits that federal agencies other than the BLM and the USFS manage federal lands in Idaho, and that some of these other agencies allow grazing on certain of those lands and hold decreed stockwater rights. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 26 and therefore denies the same.

27. The allegations in Paragraph 27 purport to characterize the decision in *United States v. State of Idaho*, 131 Idaho 468, 959 P.2d 449 (1998), a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

28. The allegations in the first sentence of Paragraph 28 purport to characterize the pre-2017 version of Idaho Code § 42-501, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied. The Legislature admits that the United States has to this date owned few livestock that graze on public lands in Idaho and that the vast majority of livestock on public lands are owned privately. The Legislature admits that the Snake River Basin Adjudication ("SRBA") commenced in 1987 and the SRBA's *Final Unified Decree* was issued in 2014,[1] and that in the SRBA the Plaintiff obtained partial decrees for stockwater rights, some of which were claimed and decreed based on federal law, but many of which were claimed and decreed based on Idaho state law. The Legislature denies any remaining allegations in Paragraph 28.

29. The Legislature admits the allegations in Paragraph 29 of the Amended Complaint.

30. With regard to Paragraph 30 of the Amended Complaint, the Legislature admits that on November 19, 1987, the District Court of the Fifth Judicial District of the State of Idaho,

[1] Water rights for certain statutorily-defined "domestic" and "stockwater" uses can still be claimed and decreed in the SRBA pursuant to the SRBA's *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims* (June 28, 2012) and *Order Amending Procedures in the SRBA for Adjudication of Deferred De Minimis Stockwater Claims* (Oct. 17, 2017). *Final Unified Decree* at 9.

in and for the County of Twin Falls, issued an order commencing the SRBA as a general stream adjudication. The Legislature denies the remaining allegations in Paragraph 30.

31. The Legislature admits the first and second sentences of Paragraph 31. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 31 and therefore denies the same.

32. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 32 and therefore denies the same. the remaining allegations of Paragraph 32 characterize the law or allege legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

33. The Legislature admits that the Plaintiff claimed some stockwater rights in the SRBA based upon state law, and others based on federal law, and some based on both. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 33 and therefore denies the same.

34. The Legislature admits that the State and some private parties objected to many of the Plaintiff's claims in the SRBA for stockwater rights, and that many of these objections were either withdrawn or resolved by settlements. The Legislature denies the remaining allegations in Paragraph 34.

35. The allegations in Paragraph 35 purport to characterize the settlement agreement reached between the United States and certain private parties in 2002, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

36. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36 and therefore denies the same.

37. The Legislature admits that stockwater rights were adjudicated to the United States in the SRBA, through a series of partial decrees issued under Rule 54(b)(l) of the Idaho Rules of Civil Procedure ("*Certificate of Partial Judgment as Final*"). The Legislature is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 37 and therefore denies the same.

38. The allegations in Paragraph 38 purport to characterize the *Joyce Livestock Company v. United States*, 144 Idaho 1, 156 P.3d 502 (2007) ("*Joyce Livestock*") and *LU Ranching Co. v. United States*, 144 Idaho 89, 156 P.3d 590 (2007) decisions, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

39. The allegations in Paragraph 39 purport to characterize the *Joyce Livestock* decision and the Notice of Court's Intent to Issue Partial Decree for Federal Uncontested Right Based on State law and Notice of Hearing Thereon, entered in SRBA subcase No. 74-15468 on February 28, 2007, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

40. The allegations in Paragraph 40 purport to characterize the SRBA's *Final Unified Decree*, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

41. The Legislature admits that when Senate Bill No. 1111 ("S.B. 1111") took effect in 2017 it repealed Chapter 5 of Title 42 of the Idaho Code and replaced it with a new chapter entitled "Stockwater Rights," and that the statutes of Chapter 5 of Title 42 of the Idaho Code

have been amended several times since then. The Legislature admits that Idaho Code § 42-113 was amended in 2018, and that Idaho Code § 42-224 was enacted in 2020 and amended in 2022 via 2022 Idaho House Bill 608 ("H.B. 608"), which took effect in March 2022. The remaining allegations in Paragraph 41 purport to characterize S.B.1111, H.B. 608, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

42. The Legislature admits the allegations in Paragraph 42 of the Amended Complaint.

43. The allegations in Paragraph 43 purport to characterize S.B. 1111, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

44. The allegations in Paragraph 44 purport to characterize S.B. 1111 as codified in Idaho Code § 42-501, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

45. The allegations in Paragraph 45 purport to characterize S.B. 1111 and the *Joyce Livestock* decision, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

46. The allegations in Paragraph 46 purport to characterize S.B. 1111, the *Joyce Livestock* decision and Idaho Code § 42-501, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

47. The allegations in Paragraph 47 purport to characterize the pre-2017 version of Idaho Code § 42-501, which was repealed by S.B. 1111, S.B. 1111, and the *Joyce Livestock* decision, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

48. The allegations in Paragraph 48 purport to characterize S.B. 1111 and the *Joyce Livestock* decision, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

49. The allegations in Paragraph 49 purport to characterize a letter sent by the Idaho Governor, the Speaker of the Idaho House of Representatives, and the President Pro Tem of the Idaho Senate to the Secretary of the United States Department of the Interior and the Secretary of the United States Department of Agriculture in March 2018, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.[2]

50. The Legislature admits that in March 2018 the Governor signed 2018 House Bill No. 718 ("H.B. 718"). H.B. 718 speaks for itself and provides the best evidence of its contents. The remaining allegations in Paragraph 50 purport to characterize H.B. 718, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

[2] The Legislature reserves the right to object to the admissibility of this letter pursuant to Rule 408 of the Federal Rules of Evidence.

51. The allegations in Paragraph 51 purport to characterize H.B. 718 as enacted in 2018, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

52. The allegations in Paragraph 52 purport to characterize H.B. 718 as enacted in 2018, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

53. The allegations in Paragraph 53 purport to characterize H.B. 718 as enacted in 2018, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

54. The allegations in Paragraph 54 purport to characterize H.B. 718 as enacted in 2018, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

55. The allegations in Paragraph 55 purport to characterize a letter that the Governor of Idaho sent to the Secretary of the Department of the Interior on July 9, 2018, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

56. The allegations in Paragraph 56 purport to characterize a list of all stockwater rights decreed to the Plaintiff in the SRBA based on the "constitutional method of appropriation" that IDWR sent to the BLM, USFS, and several other federal agencies on August 28, 2018, a

document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

57. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 57 and therefore denies the same. The Legislature denies the remaining allegations in Paragraph 57.

58. The allegations in Paragraph 58 purport to characterize 2018 Senate Bill No. 1305 ("S.B. 1305") and in Idaho Code § 42- 113(2), documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

59. The allegations in Paragraph 59 purport to characterize S.B. 1305, Idaho Code § 42-113(2), 43 U.S.C. § 315b, 43 C.F.R. § 4100.0-5, 36 C.F.R. § 222.1(b)(3), and the decision in *Public Lands Council v. Babbitt*, 529 U.S. 728 (2000), documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

60. The allegations in Paragraph 60 purport to characterize S.B. 1305 and the *Joyce Livestock* decision, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

61. The Legislature admits the allegations in Paragraph 61 of the Amended Complaint.

62. The Legislature admits that 2020 House Bill No. 592 ("H.B. 592") amended some of the legislation that had previously been enacted or amended by S.B. 1111 and H.B. 718, but

did not amend Idaho Code § 42-113. The remaining allegations in Paragraph 62 purport to characterize H.B. 592, S.B. 1111, H.B. 718 and S.B. 1305, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

63. The Legislature admits that H.B. 592 repealed the forfeiture provisions enacted by H.B. 718 and added a new statute to Chapter 2 of Title 42 of the Idaho Code (Idaho Code § 42-224) that defines the procedures for determining whether a State law-based stockwater right has been lost through non-use pursuant to the substantive forfeiture provisions of Idaho Code § 42-222(2). The remaining allegations in Paragraph 62 purport to characterize H.B. 592 and Idaho Code § 42-224, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

64. The Legislature admits the allegations in Paragraph 64 of the Amended Complaint.

65. The allegations in Paragraph 65 purport to characterize H.B. 592 and Idaho Code § 42-224(4), documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

66. The allegations in Paragraph 66 purport to characterize Idaho Code § 42-222(2), the *Sagewillow, Inc. v. Idaho Dep't of Water Res*., 138 Idaho 831, 70 P.3d 669 (2003) decision, and the *Zezi v. Lightfoot*, 57 Idaho 707, 68 P.2d 50 (1937) decision, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

67. The allegations in Paragraph 67 purport to characterize H.B. 592 and Idaho Code §§ 42-502 and 42-224, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

68. The allegations in Paragraph 67 purport to characterize H.B. 592 and Idaho Code § 42-504, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

69. The allegations in Paragraph 69 purport to characterize the show-cause order IDWR issued to the Plaintiffs on October 27, 2021, a document which speaks for itself and provides the best evidence of its contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

70. The Legislature admits that the stockwater rights at issue in the show-cause order referenced in Paragraph 70 of the Amended Complaint were decreed in the SRBA. The remaining allegations in Paragraph 70 purport to characterize a private agreement between the Plaintiff and one of its grazing permittees, the show cause order, and the partial decrees for the stockwater rights identified in the show-cause order, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

71. The Legislature admits that on November 12, 2021, IDWR issued an order withdrawing the show-cause order referenced in Paragraphs 69 and 70. The Legislature denies the remaining allegations in Paragraph 71 because they purport to summarize, interpret, apply or draw conclusions from the November 12, 2021 order, which speaks for itself.

72. The Legislature admits that, in addition to the petition that led to issuance of the show-cause order referenced in Paragraph 69, IDWR also received other petitions filed by private parties pursuant to Idaho Code § 42-224 but did not issue show-cause orders in response to those petitions until after Idaho Code § 42-224 was amended by H.B. 608. The Legislature denies the remaining allegations in Paragraph 72 because they purport to summarize, interpret, apply or draw conclusions from Idaho Code § 42-224, which speaks for itself.

73. The Legislature admits that H.B. 608 took effect on March 24, 2022, and made amendments to Idaho Code § 42-224. The Legislature denies the remaining allegations in Paragraph 73 because they purport to summarize, interpret, apply or draw conclusions from Idaho Code § 42-224 and the *Joyce Livestock* decision, which speak for themselves.

74. Paragraph 74 purports to characterize H.B. 608 and Idaho Code § 42-224, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

75. Paragraph 75 purports to characterize H.B. 608 and Idaho Code § 42-224, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

76. Paragraph 76 purports to characterize H.B. 608, Idaho Code § 42-224, and the *Joyce Livestock* decision documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

77. Paragraph 77 purports to characterize H.B. 608 and Idaho Code § 42-224, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response. To the extent a response is required, the allegations are denied.

78. The Legislature admits the allegations in the first sentence of Paragraph 78 of the Amended Complaint. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of Paragraph 78 and therefore denies the same.

79. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 79 and therefore denies the same.

80. The Legislature admits the allegations in the first sentence of Paragraph 80 of the Amended Complaint. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 80 and therefore denies the same.

81. Paragraph 81 purports to characterize S.B. 1111, H.B. 718, S.B. 1305, H.B. 592, and H.B. 608, the Idaho statutes enacted, amended, and/or repealed by these bills, and the *Joyce Livestock* decision, documents which speak for themselves and provide the best evidence of their contents; therefore, the allegations do not require a response.

VI. DECLARATORY RELIEF ALLEGATIONS

82. Paragraph 82 characterizes the law or alleges legal conclusions, to which no answer is required. To the extent a response is required, the allegations are denied.

83. The Legislature admits that Idaho Code §§ 113(2)(b), 42-224, 42-501, 42-502 and 42-504 were enacted, amended and/or repealed by S.B. 1111, H.B. 718, S.B. 1305, H.B. 592, and/or H.B. 608. The Legislature denies the remaining allegations in Paragraph 83.

84. The Legislature denies the allegations in Paragraph 84.

85. The Legislature is without knowledge or information sufficient to form a belief as to the truth of the allegations Paragraph 85 and therefore denies the same.

86. Paragraph 86 characterizes the law or alleges legal conclusions, to which no answer is required. To the extent a response is required, the allegations are denied.

VII. FIRST CLAIM FOR RELIEF
(Federal Sovereign Immunity)

87. The Legislature incorporates by reference its answers to Paragraphs 1 through 86 above.

88. The Legislature admits that H.B. 608 amended Idaho Code § 42-224, which defines procedures for determining whether stockwater rights based on Idaho State law have been lost through non-use pursuant to the statutory forfeiture provisions of Idaho Code § 42-222(2). The Legislature denies the remaining allegations in Paragraph 88.

89. The Legislature denies the allegations in Paragraph 89.

90. The Legislature denies the allegations in Paragraph 90.

VIII. SECOND CLAIM FOR RELIEF
(Supremacy Clause of the U.S. Constitution-Intergovernmental Immunity)

91. The Legislature incorporates by reference its answers to Paragraphs 1 through 90 above.

92. The Legislature denies the allegations in Paragraph 92.

93. The Legislature denies the allegations in Paragraph 93.

94. The Legislature denies the allegations in Paragraph 94.

95. The Legislature denies the allegations in Paragraph 95.

96. The Legislature denies the allegations in Paragraph 96.

97. The Legislature denies the allegations in Paragraph 97.

IX. THIRD CLAIM FOR RELIEF
(Property Clause of U.S. Constitution)

98. The Legislature incorporates by reference its answers to Paragraphs 1 through 97 above.

99. Paragraph 99 characterizes the law or alleges legal conclusions, to which no answer is required. To the extent a response is required, the allegations are denied.

100. The Legislature denies the allegations in Paragraph 99.

X. FOURTH CLAIM FOR RELIEF
(Contract Clause of the U.S. Constitution)

101. The Legislature incorporates by reference its answers to Paragraphs 1 through 100 above.

102. The Legislature denies the allegations in Paragraph 102.

103. The Legislature lacks sufficient knowledge of the "settlements" referenced in Paragraph 103 of the Amended Complaint to evaluate the allegations in that paragraph, and in any case the "settlements" speak for themselves. The Legislature therefore denies the allegations in Paragraph 103.

104. The Legislature denies the allegations in Paragraph 104.

XI. FIFTH CLAIM FOR RELIEF
(Retroactivity Clause of the Idaho Constitution)

105. The Legislature incorporates by reference its answers to Paragraphs 1 through 104 above.

106. The Legislature admits that a "civil action" pursuant to Idaho Code § 42-224(10)-(12) could result in issuance of a court order and judgment determining that some or all of the state law-based stockwater rights at issue in this case have been lost through non-use pursuant to

the statutory forfeiture provisions of Idaho Code § 42- 222(2). The Legislature denies the remaining allegations in Paragraph 106.

107. Paragraph 107 characterizes the law or alleges legal conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

108. The Legislature denies the allegations in Paragraph 108.

109. The Legislature denies the allegations in Paragraph 109.

XII. PRAYER FOR RELIEF

110. The Legislature denies that the Plaintiff is entitled to a judgment awarding the relief requested in Paragraph 110, denies that the Plaintiff has stated facts entitling it to relief, denies that the Plaintiff has stated claims for which relief may be granted, denies that the Plaintiff is entitled to any relief whatsoever, and requests that this Court dismiss the Amended Complaint with prejudice.

AFFIRMATIVE DEFENSES

1. The Plaintiff's claims, or some of them, fail to state claims for which relief may be granted.

2. The Plaintiff lacks standing.

3. The Plaintiff's claims are moot.

4. The Plaintiff's claims are not ripe.

5. The Plaintiff's claims that its state law-based stockwater rights were decreed for use by federal grazing permittees, to support or enable federal grazing programs, or for any purpose other than watering livestock owned by the Plaintiff, are barred and foreclosed by the doctrine of *res judicata* or principles of collateral estoppel.

6. The Plaintiff's claims that its state law-based stockwater rights are not subject to the requirements, limitations, standards and procedures of Idaho water law, including but not limited to the statutory forfeiture procedures and provisions of Idaho Code §§ 42-224 and 42-222(2), are barred and foreclosed by the doctrine of *res judicata* or principles of collateral estoppel.

7. The Plaintiff's claims are precluded by the primary jurisdiction doctrine.

8. This Court lacks subject matter jurisdiction.

9. Plaintiff's claims are barred by the doctrines of waiver, estoppel, laches, or by the equal footing doctrine.

10. Injunctive relief is not appropriate because Plaintiff has an adequate legal remedy.

11. Plaintiff is precluded from recovering under the allegations of the Amended Complaint due to its failure to exhaust administrative remedies.

12. Plaintiff's requested relief is overbroad and violates principles of comity and federalism.

13. The Legislature has a right to discovery from other parties to this action, including Plaintiff, and reserves the right to amend this Answer to add additional affirmative defenses supported by the facts, and the non-inclusion of such defenses here should not be deemed to waive any such further amendment of this Answer.

THE LEGISLATURE'S REQUEST FOR RELIEF

WHEREFORE, the Legislature prays that the Court enter judgment in its favor and against Plaintiff United States of America, as follows:

1. That the Plaintiff's Amended Complaint be dismissed in its entirety and that the Plaintiff take nothing thereby.

2. For an Order declaring the challenged laws of the State of Idaho valid and enforceable.

3. For an Order awarding the Legislature its reasonable costs and attorney fees pursuant to Federal Rule of Civil Procedure 54(d) and as otherwise allowed by law.

4. For any and all further relief as the Court may find to be just, equitable, and appropriate under the circumstances.

Dated this __ day of July, 2022

HOLLAND & HART LLP

By: _____
William G. Myers III
Murray D. Feldman
Alison C. Hunter

Attorneys for Intervenor-Defendants Idaho Legislature

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