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June 10, 2021

VIA EMAIL & U.S. MAIL

James Cefalo
Idaho Department of Water Resources
Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402

Re: Summary of Investigation / Cease and Desist Order

Dear Mr. Cefalo:

I am writing on behalf of our client Lava Ranch Property Owners Association (“LRPOA”) in response to your *Summary of Investigation/Cease and Desist Order* letter (“*Letter*”) of June 3, 2021, addressed to LRPOA. LRPOA reserves all rights under applicable law and whether the *Letter* was sent in compliance with statutory requirements. It’s my understanding my client has not received the letter by certified mail. Any timeframes that apply are hereby reserved accordingly.

Without waiving any rights, LRPOA requests a compliance conference pursuant to Idaho Code §§ 42-351(3) and 42-1701B(3-4) and will present a proposal for remedying the alleged violations specified in the *Letter* and a plan for future compliance. It is my understanding that a water bank rental may be possible for 2021 and LRPOA intends to file an application for permit as well. As I am currently involved in an administrative hearing scheduled by the Director for two weeks I cannot schedule that at this time, but will as soon as the hearing concludes. I also have a meeting with IDWR in Moscow on June 16th and will be unavailable that day.

The wells supply water to residences for domestic use within the subdivision. It is the only source of water. Idaho Code § 42-111 creates a domestic exemption to the recorded water right requirement if diversion rates do not exceed 0.04 cfs and daily diversion volume does not exceed 2,500 gallons per day.

Idaho Department of Water Resources (“IDWR”) however, identifies two wells operated by LRPOA, the use of which together exceed the domestic exemption. Specifically, LRPOA maintains a “lower system” which diverts at a rate of 0.05 cfs, and an “upper system” which has

the capacity to fill a 3,000-gallon storage system at least once a day, with an automatic refill feature.

Proposed Remedy and Plan for Compliance

The *Letter* instructs LRPOA to shut-off and lock both upper and lower systems, but also that if the upper system is shut-off and locked by June 15, 2021, no further immediate action is required. LRPOA proposes to remedy its violation and assure future compliance by pursuing three separate actions.

First, by June 15, 2021, LRPOA intends to install a timer on its upper system limiting pumping to a twelve (12.5) hours period that will reduce the upper system's diversion to less than 2,500 gallons per day.¹ The timer will be locked to prevent tampering, and inspection by the State is welcome, as needed. Use of the upper system will therefore be in compliance with the domestic exemption. Additionally, on June 15, 2021, LRPOA will shut-off and lock the lower system until such time as a water bank rental or a permanent permit can be secured. These actions will bring LRPOA domestic use within the exemption rate of 2,500 gallons per day.

Second, by June 15, 2021, LRPOA will submit an application to the water bank for the remainder of 2021 in order to cover the water usage and diversion of the upper and lower system.

Third, by June 15, 2021, LRPOA will submit an application permit for permanent water right to cover its use and diversion of water for both upper and lower systems. This will ensure that LRPOA remains in compliance with Idaho law in the future.

Consent Order

Pursuant to Idaho Code § 42-1701B(4), LRPOA submits the above-described action plan and requests IDWR formalize this agreement for compliance with a consent order following a compliance conference. LRPOA believes that this plan is the most expedient way to bring itself into compliance with Idaho law, protect against possible damage to other water right holders, and provide for future compliance in years to come.

LRPOA hopes to resolve this matter expediently and fairly. I look forward to discussing the matter further and coming to a quick resolution and compliance plan.

¹ The *Letter* estimates that the upper system can fill its tanks at a rate of 3.3 gallons per minute, over a limited 12-hour pumping period, the upper system will only pump approximately 2,475 gallons a day.

Mr. James Cefalo (IDWR)
June 10, 2021
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Sincerely,

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in blue ink, appearing to read 'Travis L. Thompson', with a stylized flourish at the end.

Travis L. Thompson

cc: Garrick Baxter, IDWR Deputy Attorney General
Matt Groll, LRPOA
Lance Schuster