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Attorneys for Petitioners

**IDAHO DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

IN THE MATTER OF THE WATER
RIGHTS OF:
MICHAEL BEER AND LORI BEER
AND WATER RIGHT NO. 29-13740.

Docket No. CM-DC-2021-001

MOTION TO EXCLUDE EXPERT
WITNESS

Petitioners, Michael Beer and Lori Beer, by and through their attorney, Lance J. Schuster of the firm Beard St. Clair Gaffney PA, move to exclude Erick Powell as an expert who may provide opinions at the hearing of this matter.

The Beers move to exclude on the basis and for the reasons that on July 29, 2022, the Respondent, Lava Ranch Property Owners Association, identified Erick Powell, Ph.d, P.E. as an expert witness, but failed to provide any information regarding the opinions that Dr. Powell may provide at the hearing of this matter. The Scheduling Order, Third Notice of Continued Prehearing Conference, and Notice of Hearing stated that July 29, 2022 was not only the deadline for disclosing experts, but the deadline “for parties to submit expert reports.” The Respondent failed to disclose any expert reports of Dr. Erick Powell. As such, the Petitioners

have had no information as to what opinions, if any, Dr. Powell may have with respect to this matter. In addition, the Petitioners have had no information with which to engage a rebuttal expert witness.

Rule of Procedure of the Idaho Department of Water Resources 527 states that a hearing officer may impose “all sanctions recognized by statute or rule for failure to comply with an order regarding discovery, including but not limited to the sanctions listed in paragraphs (A), (B), and (C) of 37(b)(2) of the Idaho Rules of Civil Procedure. This includes prohibiting a party from “introducing designated matters in evidence.”

In this case, since Respondent has failed to provide any information as to the opinions of Dr. Powell, the presiding officer should issue an order excluding Dr. Powell from testifying in the hearing of this matter.

The Petitioners do not request a hearing for this motion, but request that an order be issued excluding Dr. Powell from testifying.

DATED: August 31, 2022.

/s/ Lance J. Schuster

Lance J. Schuster

BEARD ST. CLAIR GAFFNEY PA

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing *Motion to Exclude Expert*

Witness upon the following by mailing a copy thereof, properly addressed with postage prepaid,

to:

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Dated: August 31, 2022.

/s/ Lance J. Schuster

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