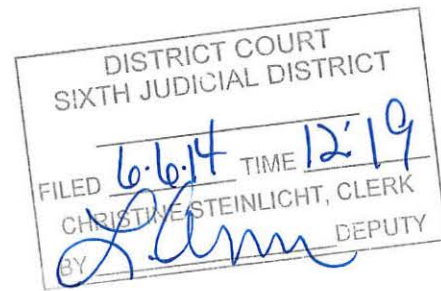


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*Attorneys for Plaintiffs*

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF POWER

ABERDEEN-SPRINGFIELD CANAL  
COMPANY, an Idaho Corporation,  
JEFFREY and CHANA DUFFIN,  
individually, as stockholders, and as  
husband and wife,

Plaintiffs,

vs.

IDAHO DEPARTMENT OF WATER  
RESOURCES, an executive department  
of the State of Idaho,

Defendant.

Case No. CV 2014-165

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR ISSUANCE  
OF TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW CAUSE  
RE: PRELIMINARY INJUNCTION**

COME NOW, the Plaintiffs, by and through counsel of record, and submit this Memorandum in Support of Plaintiffs' Motion for Issuance of Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction as follows:

**I. BACKGROUND**

This case involves a dispute over the interpretation of a statute governing certain water usage in the State of Idaho. Plaintiffs are seeking a declaratory judgment, along with the more

imminent relief of a Temporary Restraining Order and Preliminary Injunction, to ensure that their continued use of water from a recovery well for irrigation purposes will be upheld as a proper use by this Court when the controlling statute; namely, Idaho Code § 42-228, is analyzed under Idaho’s Declaratory Relief Act. For the reasons discussed below, Plaintiffs request that the Court grant their request for injunctive relief.

## II. LEGAL AUTHORITY FOR INJUNCTIVE RELIEF

Both temporary restraining orders (“TRO”) and preliminary injunctions are governed by Idaho Rule of Civil Procedure 65. Rule 65(b) provides that a TRO may be granted without notice to the adverse party when the following two circumstances are met:

- (1) [I]t clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or the party’s attorney can be heard in opposition, and
- (2) [T]he applicant’s attorney certified to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the party’s claim that notice should not be required.

Rule 65(e) provides the grounds for a preliminary injunction, among which include (1) when “it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any party thereof, consists in restraining the commission or continuance of the acts complaints of, either for a limited period or perpetually”; (2) when an act “would produce waste, or great or irreparable injury to the plaintiff”; or (3) when the defendant threatens to commit an act “in violation of the plaintiff’s rights, respecting the subject of the action, and tending to render the judgment ineffectual.”

It is well established that the granting of a TRO is within the discretion of the trial court and “its order will not be disturbed except upon a clear showing of such abuse.” *Blue Creek Land & Livestock Co. v. Battle Creek Sheep Co.*, 52 Idaho 728, 732, 19 P.2d 628, 629 (1933). Under

I.R.C.P 65(c), the issuance of a TRO or preliminary injunction generally requires that the applicant provide security. However, the proper amount of the bond under this rule is an exercise of the discretion of the trial court. *McAtee v. Faulkner Land & Livestock, Inc.*, 113 Idaho 393, 400, 744 P.2d 121, 128 (Ct. App. 1987).

### III. ARGUMENT

Plaintiffs Jeffrey and Chana Duffin (“Duffin”), residents of Aberdeen, Idaho and stockholders in Plaintiff Aberdeen-Springfield Canal Company (“ASCC”), rely on the use of a ground water well, which is operated by ASCC as a “recovery well” under the authority granted by I.C. § 42-228, to irrigate their 175 acres of potato cropland in southeast Idaho. This status quo must be maintained by a TRO and preliminary injunction in favor of Plaintiffs to prevent irreparable injury to Plaintiffs’ farming property.

Irreparable injury is certain because Defendant Idaho Department of Water Resources (“IDWR”) has indicated that it will curtail the Plaintiffs’ use of water from the recovery well in question on June 9, 2014 by locking the well or taking other measures. (*See* Exhibit “C” to the Complaint for Declaratory Relief filed herewith). If this curtailment is allowed to occur, Plaintiffs’ crops will be without irrigation water, causing devastating and permanent damage to their delicate and vital potato crops. Such curtailment would be a clear violation of Plaintiffs’ rights under Idaho Code § 42-228.

This statute specifically provides for the use of recovery wells for the “sole purpose of recovering ground water resulting from irrigation under such irrigation works for further use on or drainage of lands to which the established water rights of the parties constructing the wells are appurtenant.” This is precisely how the ground water well in question is being used by Plaintiffs. (*See* Affidavits of Steve Howser and Jeffrey Duffin filed herewith).



Importantly, because the threatened curtailment is imminent, there is simply no time for counsel for Plaintiffs to provide for notice and a hearing to Defendant before the TRO should issue. By the time such notice and hearing would be provided, Defendant will have already shut Plaintiffs' water off, and the damage to Plaintiffs' crop will already have occurred. A future judgment in Plaintiffs' favor would be ineffective in repairing the damage to the crops that will result. Furthermore, the threat and potential for severe injury to Plaintiffs crops outweighs whatever damage the proposed ordered injunction may cause by restraining or enjoining the action threatened by IDWR.

In addition, enjoining IDWR would not be adverse to the public interest. The public has a substantial interest in protecting the water rights of its farmers and their critically important crops. Idaho's farmers should not live in fear that their livelihoods will be put at risk by the violation of their water rights and by the curtailment of their use of "recovery wells" as they necessarily and properly rely upon the water from these wells for daily irrigation water.

Furthermore, there is a substantial likelihood that Plaintiffs will prevail on the merits of this action. This case presents certain legal issues on the merits, which appear to be of first impression for the Idaho courts, and for which litigation is required to clarify the use and operation of recovery wells pursuant to I.C. § 42-228 under Idaho's Declaratory Relief Act. Until such clarification is made by this Court, the status quo must be maintained to prevent irreparable harm to Plaintiff's property.

Plaintiffs are confident that they will prevail on their interpretation of the water recovery statute. The Idaho Supreme Court has consistently held that the objective of interpreting any statute is determining legislative intent. "The objective in interpreting a resolution, statute, or ordinance is to derive the intent of the legislative body that adopted the act." *Albee v. Judy*, 136

Idaho 226 (2001). Likewise, ““When this Court must engage in statutory construction, it has the duty to ascertain the legislative intent **and give effect to that intent.**” *In re Doe*, 139 Idaho 1, 2, 72 P.3d 547, 548 (Idaho App. 2003). (Emphasis added).

In order to make this determination the Court has many tools at its disposal including: the language used in the statute, the policy behind the statute, the purpose of the statute, the legislative history of the statute, and the reasonableness of the parties’ interpretations of the statute. *Sumpter v. Holland Realty, Inc.*, 140 Idaho 349, 351, 93 P.3d 680, 682 (2004). “To ascertain the intent of the legislature, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute, and its legislative history.” *State v. Reyes*, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (2003).

Even though this Court has many tools to determine legislative intent, the starting point for making a determination must always be the text of the statute itself. *See* Idaho Code Sec. 73-113(1). This statute states as follows:

The language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent.

“Legislative intent is reflected first and foremost in the language of the statute itself.” *Potlatch Corp. v. U.S.*, 134 Idaho 912, 914, 12 P.3d 1256, 1258 (2000). “If the words are in common use, they should be given the same meaning in a statute as they have among the people who rely on and uphold the statute.” *Purco Fleet Services, Inc. v. Idaho State Dept. of Finance*, 140 Idaho 121, 124, 90 P.3d 346, 349 (2004). “The plain meaning of a statute will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results.” *Rahas v. Ver Mett*, 141 Idaho 412, 413, 111 P.3d 97, 99 (2005).

If this Court finds that there is no ambiguity in the plain meaning of the contested statute, then there is no need for the Court to carry on with statutory construction. “Where the meaning of a statute is clear, the Court is confined to follow that meaning and may neither add to nor take away from it by judicial construction.” *Credit Bureau of Lewiston-Clarkston, Inc. v. Idaho First National Bank*, 117 Idaho 29, 31, 784 P.2d 885, 887 (1989). An unambiguous statute must be applied as written. *In re DeHaan*, 275 B.R. 375, 381 (2002). **This is true even if a state agency has interpreted the statute in another way.** *State v. Yager*, 139 Idaho 680, 690, 85 P.3d 656, 665 (2003); see also *Hamilton ex rel. Hamilton v. Reeder Flying Service*, 135 Idaho 568, 572, 21 P.3d 890, 894 (2001). (noting that “If the language is unambiguous, an agency’s interpretation contrary to the plain meaning of the statute will not be given deference).

Thus, the Court should only engage in statutory construction when the plain language of the statute would lead to an absurd result, the plain meaning of the text is in opposition of an expressly stated intent of the legislature, or there is ambiguity. None of those factors exist here. The statutory language is plain and clear. IDWR’s proposed reading of the statute would also lead to an absurd result because water would be wasted in direct contravention of the legislature’s clearly stated purpose.

Because Plaintiffs’ are facing irreparable and immediate injury and the potential violation of their water rights, and Plaintiffs are likely to succeed on the merits on their Complaint for Declaratory Relief, Plaintiffs request that this Court exercise its discretion in issuing a TRO. Plaintiffs also request that this Court also exercise its discretion by waiving the requirement for the giving of security, where it is clear that the Plaintiffs’ use of the ground water recovery well in question is lawful.

#### IV. CONCLUSION

Based upon the foregoing, as well as the Complaint for Declaratory Relief and Affidavits of Steve Howser and Jeffrey Duffin filed herewith, Plaintiffs' respectfully request that this Court grant Plaintiffs' Motion for Issuance of Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction.

DATED this 6<sup>th</sup> day of June, 2014.

RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED

By: Carroll J. Budge for:  
RANDALL C. BUDGE

CERTIFICATE OF SERVICE

I certify that on this 6<sup>th</sup> day of June, 2014, the foregoing document was served on the following persons in the manner indicated.



Signature of person mailing form

Director, Gary Spackman Idaho Department of Water Resources PO Box 83720 Boise, ID 83720-0098 Attn: Deborah Gibson <a href="mailto:deborah.gibson@idwr.idaho.gov">deborah.gibson@idwr.idaho.gov</a> <a href="mailto:kimi.white@idwr.idaho.gov">kimi.white@idwr.idaho.gov</a>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
James Cefalo Water Master 900 N. Skyline Dr, Ste. A Idaho Falls, Idaho 83402 <a href="mailto:james.cefalo@idwr.idaho.gov">james.cefalo@idwr.idaho.gov</a>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
John Homan Deputy Attorney General P.O. Box 83720 Boise, Idaho 83720-0098 <a href="mailto:john.homan@idwr.idaho.gov">john.homan@idwr.idaho.gov</a>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Chamber's Copy Honorable Stephen S. Dunn Bannock County Courthouse 624 E. Center, Room 220 Pocatello, Idaho 83205	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> E-mail