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Attorney for Petitioners
Carey Valley Ground Water Users

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Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-15501, 36-02551, AND 36-07694	**PETITION SETTING FORTH REASONS WHY THE CAREY VALLEY GROUND WATER USERS SHOULD NOT BE SUBJECT TO THE FEBRUARY 25, 2004 ORDER AND PETITION CONTESTING THE FEBRUARY 25, 2004 ORDER**

COME NOW Petitioners Carey Valley Ground Water Users ("CVGWU"), by and through their attorney, Dana L. Hofstetter of Hofstetter Law Office, LLC, and hereby request a determination that they are not subject to the February 25, 2004 Order, and if such relief is not granted, hereby contest the February 25, 2004 Order.

The Carey Valley Ground Water Users are irrigators who divert and use ground water in the Carey Valley and who have Basin 37 water rights included within the scope of the IDWR Director's February 25, 2004 Order. The CVGWU include the following water right holders: Scott Castle (37-7621D), Jerry Cenarrusa (37-7593A and 37-7517),

John Cenarrusa (37-7593B), Arlen Dilworth (37-2680A&B), Donald Green (37-7621G), Creg Hansen (37-7621F), Ron Hill (37-8405), Milo and Rick Mecham (37-7562), P&C Irrigation Association, Inc. (37-2740), Milford Sweat (37-7620), Pardue Land and Livestock (37-7581) and Ross Young (37-7621E). The CVGWU together divert approximately 35 cubic feet per second and approximately 7,000 acre feet per year of ground water under the water rights that are included within the scope of the Director's February 25, 2004 Order. The CVGWU were incorporated into Water District 130 last year and are not members of any ground water districts.

The CVGWU seek a determination that their water rights are not subject to the February 25, 2004 Order based on the following grounds:

1. Due to the limited amount of time provided before the February 25, 2004 Order is to go into effect, the CVGWU have not had an adequate opportunity to fully investigate the nature and degree of hydraulic interconnection, if any, of their ground water supply to Thousand Springs. Given the distance to Thousand Springs, and the proximity to the Big Wood River Valley, a significant degree of hydraulic connection may not exist and CVGWU diversions may have little or no impact on flows at Thousand Springs. Ground water levels in the Carey area have increased in recent years, indicating little or no relationship to the asserted diminishing flows at Thousand Springs.

2. Due to the limited amount of time provided before the February 25, 2004 Order is to go into effect, the CVGWU have not had an adequate opportunity to consider establishing a new ground water district or to determine whether to join an existing ground water district.

3. Due to the limited amount of time provided before the February 25, 2004 Order is to go into effect, the CVGWU also have not had an adequate opportunity to fully investigate available mitigation options. One possible mitigation measure includes discharges of water from the Little Wood River Reservoir to offset the consumptive

component of the CVGWU's ground water diversions. However, the amount of time provided after notice of the February 25, 2004 Order has not allowed the CVGWU to explore this option or others.

4. The CVGWU have invested substantial sums in their irrigation systems and have entered into contractual arrangements concerning the upcoming agricultural season. The proposed curtailment of their diversions will have drastic economic impacts on the CVGWU and the Carey Valley community. Without a good understanding of the nature and degree of hydraulic connection of the Carey Valley ground water system to Thousand Springs, the proposed curtailment of the CVGWU's diversions are unjustified.

5. Without adequate notice and time to respond, the proposed curtailment of the CVGWU's diversions and the associated economic impacts are unjustified.

6. The CVGWU's diversions represent a small percentage of the total ground water diversions subject to the February 25, 2004 Order. These diversions extend over a large, approximately 60 square mile region at a remote location to Thousand Springs. Curtailment of the CVGWU's diversions are likely to have either no impact or a *de minimis* impact on Thousand Springs within the one year period of time designated in the February 28, 2004 Order.

7. The February 25, 2004 Order provides for the established ground water districts to mitigate the full quantity required. Any additional curtailment or mitigation by the CVGWU would be unnecessary and unjustified.

To the extent the Director determines that the CVGWU are subject to the February 25, 2004 Order, the CVGWU contest the February 25, 2004 Order based on federal and State constitutional due process grounds, violations of Idaho law, including, without limitation, Idaho's Conjunctive Management Rules, and other legal and equitable principles concerning, without limitation, equitable estoppel, laches, and mitigation of damages. The CVGWU further reserve the right to identify additional legal and technical

bases for contesting the February 25, 2004 Order as further information becomes available and as its investigation of this matter proceeds.

While this matter is pending, the CVGWU requests a stay of the February 25, 2004 Order as applied to them.

DATED: March 12, 2004.

Hofstetter Law Office, LLC

By _____
Dana L. Hofstetter
For Petitioners Carey Valley Ground Water Users