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Department of Water Resources

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Attorney for Petitioner
Carey Water and Sewer District

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 WATER AND SEWER DISTRICT SHOULD NOT BE SUBJECT TO THE FEBRUARY 25, 2004 ORDER AND PETITION CONTESTING THE FEBRUARY 25, 2004 ORDER**

COMES NOW Petitioner Carey Water and Sewer District ("Carey Water"), by and through its attorney, Dana L. Hofstetter of Hofstetter Law Office, LLC, and hereby requests a determination that it is not subject to the February 25, 2004 Order, and if such relief is not granted, hereby contests the February 25, 2004 Order.

The Carey Water and Sewer District is a local improvement district that provides potable quality water to homes, businesses, community organizations and government entities within the City of Carey's water service area. Carey Water serves its customers under Water Right Nos. 37-7766 and 37-20384. Its largest customer, receiving approximately 80% of the water delivered by Carey Water, is the Blaine County School District. Carey Water also serves approximately 175 homes and 10 other establishments.

Carey Water seeks a determination that it is not subject to the February 25, 2004 Order based on the following grounds:

1. Carey Water has no other water rights, besides Water Right Nos. 37-7766 and 37-20384, to serve its customers. To the extent that diversions under these rights are completely curtailed, some residences, businesses and government entities, including the local K-12 school, will be deprived of a source of potable water. To the extent that only irrigation uses associated with Water Right Nos. 37-7766 and 37-20384 are curtailed, Carey Water will be unable to enforce such a limitation as the water is delivered in a single system to individual residential and commercial customers who determine how the water is used.

2. Curtailment of Carey Water's water supplies to businesses and residences will result in the drilling of numerous unregulated individual domestic wells and no reduction in overall ground diversions from the aquifer.

3. Ground water levels in the Carey area have increased in recent years, suggesting little or no relationship to diminishing flows at Thousand Springs.

4. Due to the limited amount of time provided before the curtailment Order is to go into effect, Carey Water has not had an adequate opportunity to fully investigate the nature and degree of hydraulic interconnection, if any, of its 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 Carey Water's diversions may have little or no impact on flows at Thousand Springs.

5. Due to the limited amount of time provided before the curtailment Order is to go into effect, Carey Water also has not had an adequate opportunity to fully investigate possible mitigation options.

To the extent the Director determines that Carey Water is subject to the February 25, 2004 Order, Carey Water contests 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. Carey Water further reserves 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, Carey Water requests a stay of the February 25, 2004 Order as applied to it.

DATED: March 12, 2004.

Hofstetter Law Office, LLC

By _____
Dana L. Hofstetter
For Petitioner Carey Water and Sewer District