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Department of Water Resources

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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.	)	CLEAR LAKES, FISHERIES DEVELOPMENT, RIM VIEW AND THE HARDY ESTATE'S PETITION TO INTERVENE

COMES NOW, Clear Lakes Trout Company, Inc. ("Clear Lakes"), Fisheries Development Company, Inc. ("Fisheries Development"), Rim View Trout Company, Inc. ("Rim View"), and Estate of Earl M. Hardy ("Hardy Estate"), by and through their attorneys, Ringert Clark, Chartered, and pursuant to Idaho Department of Water Resources ("Department") Rule of Procedure 37.01.01.350, respectfully petition the Department for leave to intervene in the above-captioned matter. The grounds for this Petition are stated below.

BACKGROUND AND BASIS FOR PETITION

1. On March 11, 2004, the Idaho Dairymen's Association ("Association") filed a Petition Requesting an Idaho Code Section 42-1701A Hearing, Request for Stay of Delivery Call Order, and Petition to Intervene. The Association's Petition requests that the Order issued by the Director of

the Department in the above-captioned matter on February 25, 2004 be stayed.

2. Clear Lakes, Fisheries Development, Rim View and the Hardy Estate own water rights which entitle them to use water for fish propagation purposes in Gooding County, Idaho. Clear Lakes owns water right nos. 36-02659 and 36-07004 for use by the Clear Lakes fish rearing facility. Clear Lakes owns water right nos. 36-07080, 36-07725 and 36-07731 for use by the Fisheries Development fish rearing facility. Rim View owns water right nos. 36-04032A, 36-04032B, 36-04032C, 36-04032D, 36-02680 and 36-07167 for use in its fish rearing facility. The Hardy Estate owns water right no. 36-07176 for use in its White Springs fish rearing facility.

3. The water sources for Clear Lakes, Fisheries Development, Rim View and the Hardy Estate's water rights are springs that are party of the spring complex commonly known as the "Thousand Springs," which is supplied by the Eastern Snake River Plain Aquifer (ESPA). The springs are tributary to the Snake River and are hydrologically interconnected to the ESPA. Junior ground water diversions from the aquifer reduce the quantity of water available to Clear Lakes, Fisheries Development, Rim View and the Hardy Estate when Clear Lakes, Fisheries Development, Rim View and the Hardy Estate need and have the right to said water.

4. Clear Lakes, Fisheries Development, Rim View and the Hardy Estate have made written demands for the delivery of water upon the Director of the Department. On October 10, 2003, the Director issued an order denying Clear Lakes, Fisheries Development, Rim View and the Hardy Estate's demands for delivery of water. A Petition Contesting October 10, 2003 Order was filed on October 27, 2003 (Contested Case). In addition, Rim View and the Hardy Estate have an action pending with the District Court, Case No. CV OC 0307551D, in Ada Count against the Director and the Department for, *inter alia*, a writ of mandate to compel the distribution and delivery of their

senior water rights. Both the Contested Case and the District Court litigation are pending at this time.

5. The Association's request for stay will affect Clear Lakes, Fisheries Development, Rim View and the Hardy Estate's water rights. The Association's request for stay will further adversely affect Clear Lakes, Fisheries Development, Rim View and the Hardy Estate's demands for delivery of water, their pending Contested Case and the District Court litigation.

6. Clear Lakes, Fisheries Development, Rim View and the Hardy Estate oppose the granting of any stay of the February 25, 2004 Order, and intend to protect their interests by opposing the Association's request for stay.

DEPARTMENT INTERVENTION REQUIREMENTS

7. Department Rules of Procedure provide that persons not applicants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party if a formal hearing is required by statute to be held in the proceeding.

8. Clear Lakes, Fisheries Development, Rim View and the Hardy Estate have a direct and substantial interest in the instant contested case proceeding. The Department's determinations in this matter, and any appeal therefrom, including, but not limited to, the Association's request for stay of the February 25, 2004 Order, stand to directly and substantially affect Clear Lakes, Fisheries Development, Rim View and the Hardy Estate's water rights and their demands for delivery of such rights. In addition to the issues raised by Clear Lakes, Fisheries Development, Rim View and the Hardy Estate, and those identified above, Clear Lakes, Fisheries Development, Rim View and the Hardy Estate reserve the right to raise additional issues if necessary during the course of this

contested case proceeding.

9. Clear Lakes, Fisheries Development, Rim View and the Hardy Estate's participation as a party will not unduly broaden the issues before the Department.

10. The interests of Clear Lakes, Fisheries Development, Rim View and the Hardy Estate are not represented by any other party to this proceeding.

11. This Petition to Intervene is timely. No hearing previously has been held in this matter. Clear Lakes, Fisheries Development, Rim View and the Hardy Estate request to participate in the Status Conference set for this matter on March 15, 2004.

Dated this 12th day of March, 2004.

RINGERT CLARK, CHARTERED

By: _____
S. Bryce Farris
Attorneys for Clear Lakes, Fisheries Development, Rim View and the Hardy Estate