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PARSONS, SMITH & STONE, LLP  
LAWYERS  
BURLEY, IDAHO

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**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF )	<b>PETITION CONTESTING AMENDED ORDER AND REQUESTING A HEARING</b>
WATER TO WATER RIGHTS NOS. 36-15501,) )	
36-02551, AND 36-07694 )	

COMES NOW the City of Burley pursuant to the terms of that certain Amended Order dated the 10<sup>th</sup> day of March 2004 issued by Karl J. Dreher in the above entitled matter; and

WHEREAS the City of Burley has water right number 36-4080.

NOW THEREFORE the City of Burley petitions as follows:

1. The Rangen call and the Amended Order failed to comply with Idaho Code § § 67-5240 and 42-237C.
2. The Director's curtailment order is constitutionally defective under the constitutions of the State of Idaho and the United States of America.
3. The well subject to the City of Burley's water right number 36-4080

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began consumptive use in 1960 having been privately developed to serve a subdivision. The priority dated reflected in the claim and report, October 1962 was the date the City of Burley took over the well. The well, therefore should not be subject to the call or the Amended Order.

4. The beneficial use of Burley's right is limited to municipal purposes which are non-consumptive and not subject to call or curtailment order.

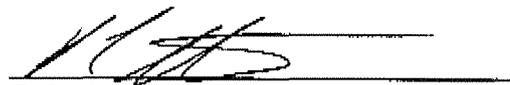
5. The Burley well is located approximately 400 yards from the Snake River in Burley, Minidoka County, Idaho. The surface level of the well is approximately 4100 feet above sea level. The pumping depth is approximately 250 feet below surface level. It is not possible for this well to have a hydrological effect on the spring flows providing the water to right numbers 36-15501, 36-02551, and 36-07694.

6. The consumptive use assumption of the Department of Water Resources is not founded upon realistic nor empirically established data.

WHEREFORE the City of Burley requests a hearing pursuant to Idaho Code 42-1701A.

DATED this 12 day of March, 2004.

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