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Department of Water Resources

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BEFORE THE IDAHO 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 REQUESTING AN IDAHO CODE SECTION 42-1701A HEARING, REQUEST FOR STAY OF DELIVERY CALL ORDER, AND PETITION TO INTERVENE**

The Idaho Dairymen's Association (the "Association") is an Idaho non-profit cooperative association, duly organized and existing under the provisions of Chapter 3, Title 30, Idaho Code. In addition to other purposes which are not relevant to this action, the Association was formed to promote the dairy interests of and in the state of Idaho, and to take such action as the Association deems necessary or advisable to stabilize and protect the dairy industry of Idaho. The regular members of the Association consists of every person, firm, corporation, or association current in their payment of the Idaho State Tax on the production of milk. This group includes every dairy owner/operator located in Gooding, Jerome, Lincoln, and Minidoka

counties, and virtually all dairy owners / operators in Idaho, who sell milk to dairy processors for ultimate human consumption.

This request for hearing under Idaho Code section 42-1701A, petition to intervene, and request for stay of delivery call order are filed by the Association on behalf of all of the named members of the Association, as set forth in Exhibit A hereto. The grounds for contesting the Order issued by the Director of the Idaho Department of Water Resources in this matter on February 25, 2004 ("Order"), are as follows:

1. Idaho Code section 67-5240 requires a hearing before the Director may order curtailment of other water rights.

2. Idaho Code section 42-237C requires a hearing when any person owning a water right for surface water use believes that the use of such right is being adversely affected by one or more users of groundwater rights of later priority.

3. The due process requirements of the Idaho and United States Constitutions require a hearing before a neutral decision maker before property rights are diminished or taken and groundwater rights subject to the Order fall within this category of property rights.

4. A stay of the Order to provide the hearing required by law will not adversely impact the availability of water to fill Rangen's water rights.

5. The Order is overbroad in its scope and is not based upon substantial evidence to support a curtailment of post-July 13, 1962 groundwater rights in Water District 130 to satisfy the Rangen delivery call. Therefore, the Order is arbitrary and capricious and constitutionally defective. The exercise of water rights of the members of the Association who would be impacted by the Order do not constitute a measurable impact upon the water resource

which could affect the Rangen water rights. Therefore, the curtailment provisions of the Order unjustifiably discriminate against the holders of water rights for dairy operations.

6. The Delivery Call Order is arbitrary and capricious because it does not evaluate whether the Rangen delivery call is a futile call.

7. The Delivery Call Order is arbitrary, capricious, and an abuse of discretion because it fails to impose restrictions or curtailment upon domestic water right use or future domestic well development within the boundaries of Water District No. 130.

8. The Idaho Dairymen's Association represents the interests of dairy operators located within Water District No. 130 who have vested water rights which will be impacted by the Order in its present form. Therefore, the Association has standing to assert and protect the real property interests of the members of the Association in this proceeding. Intervention into this proceeding is, therefore, appropriate under the Idaho Department of Water Resources' Rules of Practice and Procedure. The Association only became aware of the impact of this proceeding upon the issuance of the Order on February 25, 2004.

9. The Director of the Idaho Department of Water Resources, by virtue of the consequences of enforcement of the Order, will be causing the termination of water delivery to approximately 125,000 dairy animals. Termination of water use on dairies, which will occur if the Order is enforced as stated, will cause the suffering and rapid death of all of these animals. Consequently, the Director will become an accomplice, accessory, or the de-facto violator of Chapter 35 of Title 25, concerning cruelty to animals.

10. The Order should be stayed pending a final resolution of this matter, including the requested hearings before the Director of the Idaho Department of Water Resources. The Department has authority to issue a stay of the Order pending review through

the requested hearing process and through judicial review, pursuant to Idaho Code section 67-5274. Failure to stay the Order, pending resolution of these matters through the hearing process and judicial review, will have a devastating economic, emotional, and environmental upon the entire Magic Valley. The death by lack of water of 125,000 dairy animals will be horrific in its scope. Consequently, a stay is totally justified under the circumstances.

DATED this 11th day of March, 2004.

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By _____
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