

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

**IN THE MATTER OF DISTRIBUTION
OF WATER TO WATER RIGHT NOS.
85-15730 (ARD) AND 85-15851 (BOWEN)**

**ORDER GRANTING
MOTION TO DISMISS**

On July 25, 2025, David Ard and Mark (Jim) Bowen (“Petitioners”) submitted a *Petition for Delivery Call* with the Idaho Department of Water Resources (“Department”), pursuant to the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources (“Conjunctive Management Rules”) (IDAPA 37.03.11). On September 15, 2025, Department staff returned the petition unprocessed because it was missing required information. On October 7, 2025, Petitioners filed an amended *Petition for Delivery Call* with the Department, listing Lewiston Orchards Irrigation District (“LOID”) as the sole respondent. On February 6, 2026, Petitioners filed a second amended *Petition for Delivery Call* (“Petition”) listing LOID, Flying B Family Farms LLC, David & Susan Smith, Gregory E Phillips, Mark & Joan Wittman, Red Pheasant Water Co LLC, Tammany View LLC, Verl Long, Brent & Linda Schumacher, Richard Kelly & Connie Kelly Revocable Living Trust, Idaho Department of Lands, Tyler Smith & Amberlea Doyle, Dave Howell, Kenneth Humiston, Michael Albright, Trever Yochum, Progressive Development LLC, and Joseph F Kaufman as potential respondents.

On May 12, 2026, LOID filed *Lewiston Orchards Irrigation District’s Motion to Dismiss* (“Motion to Dismiss”), asking the hearing officer to dismiss the *Petition* for Petitioners’ failure to state a claim upon which relief can be granted. On May 26, 2026, Petitioners filed a timely *Response to LOID’s Motion to Dismiss Memorandum from Ard and Bowen* (“Response”). On May 28, 2026, LOID filed *Lewiston Orchards Irrigation District’s Reply Memorandum in Support of Motion to Dismiss*.

The *Petition* was filed pursuant to Rule 41 of the Department’s Conjunctive Management Rules (IDAPA 37.03.11). Rule 41, titled “Administration of Diversion and Use of Water Within a Ground Water Management Area,” does not provide an enumerated list of requirements for a petition for delivery call to be considered complete. Instead, the requirements are contained within the introductory paragraph of the rule. Rule 41.01 states:

Responding to a Delivery Call. When a delivery call is made by the holder of a senior-priority ground water right against holders of junior-priority ground water rights in a designated ground water management area alleging that the ground water supply is insufficient to meet the demands of water rights within all or portions of the ground water management area and requesting the Director to order water right holders, on a time priority basis, to cease or reduce withdrawal of water, the Director shall proceed as follows:

- a. The petitioner shall be required to submit all information available to petitioner on which the claim is based that the water supply is insufficient.
- b. The Director will conduct a fact-finding hearing on the petition at which the petitioner and respondents may present evidence on the water supply, and the diversion and use of water from the ground water management area.

IDAPA 37.03.11.041.01.

Rule 41.01 identifies two elements that must be included in any delivery call made by the holder of a senior-priority ground water right against holders of junior-priority ground water rights in a ground water management area. First, the delivery call must allege “that the ground water supply is insufficient to meet the demands of water rights within all of portions of the ground water management area.” Second, the delivery call must ask the Director of the Department “to order water right holders, on a time priority basis, to cease or reduce withdrawal of water.”

LOID argues that the *Petition* should be dismissed for two reasons. First, LOID argues that the *Petition* does not allege that the ground water supply in the Lewiston Plateau Ground Water Management Area (“Lewiston Plateau GWMA”) is insufficient to meet the demands of water rights within the management area. Second, LOID argues that the *Petition* does not seek curtailment on a time priority basis. Instead, LOID argues that the *Petition* asks the Director to only curtail LOID’s ground water rights.

The *Petition* includes the following statements:

Since LOID began using Wells #5 and #6, other wells with senior water rights have been declining, not recharging.

[The Department’s] monitoring of domestic wells . . . shows a sharp decline in water levels between 2020 and 2021. Specifically, the water levels lowered between 18 and 29 feet where LOID wells are located.

The Grande Ronde Basalts water level have decreased an average of 10 feet in the last four years.

Ard’s and Bowen’s wells have experienced a continued decrease in available water.

Petition at 5.

The *Petition* clearly identifies a concern about the sufficiency of the water supply in the Lewiston Plateau GWMA. The Petitioners’ allegations of declining ground water levels without recovery satisfy the requirement of alleging that the ground water supply is insufficient to meet the demands of water rights within the Lewiston Plateau GWMA.

The *Petition* includes the following statements:

LOID is the respondent incriminated in this petition for delivery call because they are by far the most injurious junior water rights entity pumping water from the Grande Ronde Aquifer within the Lewiston Plateau GWMA.

The [other people and entities holding junior water rights] are being named per the request of LOID, by the direction of the administrative hearing officer, and in accordance with IDAPA 37.03.11.041. However, the petitioners believe these well-owners' individual impacts to be minimal on the water level declines in the Lewiston Plateau GWMA.

Petition at 3.

The *Petition* also includes a section titled "Relief Requested," which includes the following items:

- A. Accept data gathered and interpreted by IDWR hydrogeologist(s);
- B. Find that all parties are within the Lewiston Plateau GWMA;
- C. Find that Ard's and Bowen's wells have suffered, and will suffer, material injury as a result of LOID junior water right priority (Water Right #85-15255) ground water pumping in the areas encompassed by the Lewiston Plateau GWMA;
- D. Curtail LOID junior water right priority (Water Right #85-15255) pumping as necessary to allow recharge of Grand Ronde Aquifer, prevent waste, and ensure continued access to water for Ard and Bowen[;]
- E. Provide for such other and further relief as may be deemed appropriate[; and]
- F. Otherwise manage the ground water from Grande Ronde Aquifer to mitigate the declining water levels.

Petition at 6-7.

The *Petition* does not ask the Director "to order water right holders, on a time priority basis, to cease or reduce withdrawal of water." Rather, the *Petition* asks the director to "[f]ind that Ard's and Bowen's wells have suffered, and will suffer, material injury as a result of LOID junior water right priority (Water Right #85-15255) ground water pumping" and to "[c]urtail LOID[s] junior water right priority (Water Right #85-15255) pumping as necessary to allow recharge of Grande Ronde Aquifer, prevent waste, and ensure continued access to water for Ard and Bowen." The *Petition* is not ambiguous. It only asks the Director to curtail a single junior water right out of several water rights that are junior to the rights held by the Petitioners. This is not consistent with the requirements of IDAPA 37.03.11.041. In their *Response*, Petitioners reinforce their position that the Director should only curtail water rights held by LOID:

[The Petition contains] evidence that there is insufficient water for LOID's purposes.

All junior water rights owners were included in the petition and served the petition as requested by LOID and the hearing officer. The petitioners hand delivered a copy of [the] petition to a majority of the respondents and answered questions and discussed the problem. Petitioners also explained that LOID's excessive pumping is likely to deplete all our water and encouraged people to get involved.

LOID indicates that the petitioners are targeting their water permit. The petitioners are merely stating the facts which will be supported in a hearing. LOID has yet to dispute that they, far and away, use the most water in the [Lewiston Plateau] GWMA.

Response at 2-3.

The *Petition* was framed in a way that suggests that ground water right 85-15255 held by LOID is the only water right subject to the delivery call. When given an opportunity to clarify that the delivery call is being made against all junior ground water rights, the Petitioners, in their *Response*, confirmed that their delivery call is only directed to LOID. The language of the *Petition* and the statements from the Petitioners create uncertainty and ambiguity for the people and entities holding ground water rights in the Lewiston Plateau GWMA junior to the water rights held by the Petitioners.

The Petitioners may wonder why it is essential that a petition for delivery call filed pursuant to IDAPA 37.03.11.041 include an explicit request for the Director of the Department "to order water right holders, on a time priority basis, to cease or reduce withdrawal of water." It is a question of sufficient notice and due process. Junior water right holders must be given clear notice that there is a request to curtail their water rights. The *Petition* in this contested case does not provide clear notice of a request to curtail all junior ground water rights. Even though the Petitioners served copies of the *Petition* on all people holding ground water rights junior to the water right of the Petitioners, the *Petition* states in multiple places that the delivery call is directed to water right 85-15255 held by LOID. Therefore, junior water right holders would have no impetus to participate in this contested case because the *Petition* does not properly characterize the possibility of administration, on a time priority basis, that would occur if the Petitioners were to demonstrate that the water supply is insufficient to meet the demands of water rights within the Lewiston Plateau GWMA. In other words, the *Petition* does not notify junior water users of the true risk of administration and curtailment of their water rights.

Because the *Petition* does not satisfy the requirements of IDAPA 37.03.11.041, the *Petition* should be dismissed without prejudice.

ORDER

IT IS HEREBY ORDERED that the *Motion to Dismiss* filed by Lewiston Orchards Irrigation District is GRANTED.

IT IS FUTHER ORDERED that the second amended *Petition for Delivery Call* filed by David Ard and Mark (Jim) Bowen is DISMISSED WITHOUT PREJUDICE.

Dated this 5th day of June 2026.

A handwritten signature in black ink, appearing to read 'J. Cefalo', written over a horizontal line.

James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of June 2026, true and correct copies of the documents described below were served by the method indicated upon the following:

Documents Served: Order Granting Motion to Dismiss

DAVID R ARD 3627 23 RD ST LEWISTON, ID 83501 Daveard65@gmail.com <i>Petitioner</i>	☒ U.S. Mail - Certified ☒ Email
MARK J BOWEN 2304 GRELLE AVE LEWISTON, ID 83501 mjimbowen@gmail.com <i>Petitioner</i>	☒ U.S. Mail - Certified ☒ Email
LEWISTON ORCHARDS IRRIGATION DISTRICT FRANK MARESCA BARNEY METZ 1520 POWERS AVE LEWISTON, ID 83501 barneymetz@loid.net <i>Respondent</i>	☒ U.S. Mail, postage prepaid ☒ Email
FLYING B FAMILY FARMS LLC 369 LYTLE CREEK RD LYTLE CREEK, CA 92358 reeneb@innovacyn.com <i>Respondent</i>	☒ U.S. Mail, postage prepaid ☒ Email
DAVID & SUSAN SMITH 60832 VOMER RD LEWISTON, ID 83501 <i>Respondent</i>	☒ U.S. Mail, postage prepaid
GREGORY E PHILLIPS 800 TAMMANY RIDGE RD LEWISTON, ID 83501 <i>Respondent</i>	☒ U.S. Mail, postage prepaid

RED PHEASANT WATER CO LLC 1065 HARVEST MOON LN LEWISTON, ID 83501 <i>Respondent</i>	☒ U.S. Mail, postage prepaid
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Christina Henman
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