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DEPARTMENT OF
WATER RESOURCES

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ISB No. 3737

*Attorneys for Respondent
Lewiston Orchards Irrigation District*

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

IN THE MATTER OF DISTRIBUTION	)	LEWISTON ORCHARDS
OF WATER AND TO WATER RIGHT	)	IRRIGATION DISTRICT'S
NOS. 85-15730 (ARD) AND	)	REPLY MEMORANDUM IN
85-15851 (BOWEN)	)	SUPPORT OF MOTION
	)	TO DISMISS

I. INTRODUCTION

Respondent, the Lewiston Orchards Irrigation District ("LOID"), filed a Motion to Dismiss Petitioners' Second Amended Petition for Delivery Call pursuant to IDAPA 37.01.01.220 and IDAPA 37.03.11.041. Petitioners have submitted a Response. This Memorandum is submitted in reply to Petitioners' Response.

II. BACKGROUND

Petitioners allege that they, LOID, and all Respondents in this matter – who are referred to as "well owners" in paragraph II.2 of the Petition – have water rights within the Lewiston Plateau Ground Water Management Area (GWMA). Petitioners alleged that

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since LOID began using its Wells #5 and #6, Petitioners have “experienced a continued decrease in available water.” Petitioners requested the following relief:

- 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’s 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 Grande Rond 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 the Grande Ronde Aquifer to mitigate the declining water levels.

(Petition, IV.1.A-F)(emphasis added).

LOID moved to dismiss because: 1) under IDAPA 37.03.11.041, a water call requires an allegation that “the ground water supply is insufficient to meet the demands of water rights within all or a portion of the ground water management area”, and Petitioners made no such allegation; and 2) under the same Rule, if the Director finds that the ground water supply is insufficient, water rights must be curtailed on a “time priority basis”, yet Petitioners targeted only LOID and skipped over all the water rights holders junior to LOID. Therefore, the Petition failed to state a claim upon which relief could be granted.

In response, Petitioners claim that their Petition, read inferentially, does allege that the ground water supply might someday be insufficient, and does seek curtailment on a

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time priority basis. They allege further that LOID's Motion is simply a stall tactic.

Inferences are not allegations. If Petitioners want to pursue this matter, they should be required to file a third amended petition which clearly and plainly alleged that there is presently – not that there someday might be – insufficient water to meet the demands all groundwater users within the GWMA, and provide their evidence supporting that allegation.

Further, Petitioners must also state clearly and plainly in their petition that they are seeking to curtail the water rights of water rights holders junior to LOID. Arguing that LOID's Motion is insufficient to put those junior water rights holders on notice is not a substitute for filing a petition which actually states that Petitioners are seeking that relief.

The Director must adjudicate the Petition which has been filed with the Department, and determine whether Petitioners are entitled to the relief requested in that Petition. As pointed out, as the Petition now stands, it does not state a claim upon which the Director can grant the relief requested.

Finally, LOID's Motion is no manner a stall tactic. The rules are the rules. LOID's only goals are to assure that the rules are followed, and that those who could lose their water rights as a consequence of what Petitioners are asking the Director to do are unambiguously made aware of that fact.

DATED this 28th day of May, 2026.

CLEMENTS, BROWN & McNICHOLS, P.A.

By /s/ Bentley G. Stromberg
BENTLEY G. STROMBERG

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 2026, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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