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DEPT. OF WATER RESOURCES
EASTERN REGION

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

I. INTRODUCTION

Respondent, the Lewiston Orchard's Irrigation District ("LOID"), has filed a Motion to Dismiss Petitioners' February 6, 2026, Second Amended Petition for Delivery Call pursuant to IDAPA 37.01.01.220 and IDAPA 37.03.11.041. This Memorandum is submitted in support of that Motion.

II. BACKGROUND

Petitioners allege that they, and all Respondents in this matter, have wells and water rights within the Lewiston Plateau Ground Water Management Area (GWMA). (Petition, ¶¶ I.1-1.5, II.1-2 and IV.1.B). Petitioners allege that since LOID began using its Wells #5

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DISTRICT'S MEMORANDUM IN
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and #6, they have “experienced a continued decrease in available water.” (Petition, ¶ III.3).

Petitioners request 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).

III. ARGUMENT

Petitioners allege that -- and neither LOID nor any other Respondent has disputed that -- they, and all Respondents in this matter, have wells and water rights within the Lewiston Plateau Ground Water Management Area (GWMA). Accordingly, this matter is governed by IDAPA 37.03.11.041.

That Rule provides, in pertinent part:

- .01 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 rights holders, on a time priority basis, to cease or reduce withdrawal of water, the Director shall proceed as follows:

* * *

- .02 Order.** Following the hearing, the Director may take any or all of the following actions:
- a. Deny the petition in whole or in part;
 - b. Grant the petition in whole or in part or upon conditions;
 - c. Find that the water supply of the ground water management area is insufficient to meet the demands of water rights within all or portions of the ground water management area and order water right holders on a time priority basis to cease or reduce withdrawal of water, provided that the Director shall consider the expected benefits of an approved mitigation plan in making such finding.

(Underlining added). Based on the above, the Petition falls short of stating a claim upon which relief can be granted in two critical ways.

First, the Petition nowhere alleges that the ground water supply in the GWMA “is insufficient to meet the demands of water rights within” the area. Instead, it alleges only that they have “experienced a continued decrease in available water.” (Petition, ¶ III.3). That allegation is insufficient to sustain a water call claim under IDAPA 37.03.11.041.01.

And second, the Petition does not seek curtailment “on a time priority basis”. The Petition seeks curtailment only of LOID’s water rights, even though many of the water rights holders named in the Petition possess water rights which are junior to LOID’s. IDAPA 37.03.11.041.01 and .02 do not allow targeted curtailment. Instead, they require curtailment “on a time priority basis”. Accordingly, the Department cannot grant the relief

requested by Petitioners.

This second point is especially important. The Petition nowhere discloses to those Respondents who hold water rights junior to LOID's that a consequence of this action may be a reduction or complete curtailment of their ground water rights. If the Petition had made that fact clear, LOID suspects that many more of the named Respondents would be taking an active role in this litigation.

IV. CONCLUSION

For the foregoing reasons, LOID's Motion to Dismiss should be granted. If Petitioners wish to refile again, their Petition must allege that there is insufficient groundwater within the GWMA to meet the needs of all water right holders, and they must make clear to all Respondents that Petition may result in the curtailment of all junior water rights holders water rights, and not simply LOID's.

DATED this 12th 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 12th 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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